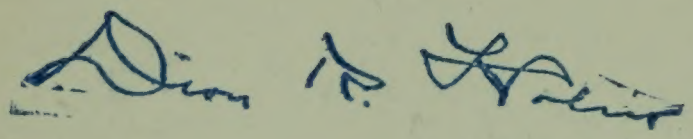

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January
Second,
1926.

SUBJECT: MAKING AFFIDAVIT FOR INSANITY WARRANT.

Sir:

I am in receipt of your request for an opinion as follows:

"The Board of health respectfully requests an opinion as to the proper mode of procedure to be followed concerning the commitment of a mentally deranged patient to the Detention Hospital preliminary to the Lunacy Commission passing upon the case.

The particular point upon which we desire to be advised is:- Who is competent to swear to the necessary warrant requisite to holding the patient?

For your possible enlightenment as to reason for this request I take the liberty of attaching herewith copies of correspondence had with the Superintendent of the San Francisco Hospital on the subject and the answer of the Health Officer thereto."

O P I N I O N

Under section 2168 Political Code anyone who knows the facts may make the affidavit for a warrant in an insanity case.

However, I am satisfied that an interne cannot be compelled to make such affidavit unless he desires to do so. It is no part of his official duties because it is a matter for the judgment of the person making the affidavit. If he is unwilling to swear to the necessary facts he cannot be made to do so against his will.

Respectfully submitted,

CITY ATTORNEY

HEALTH OFFICER.

(2)

January
Second,
1 9 2 6.

SUBJECT: RECORDATION OF RESTORED BIRTH CERTIFICATE.

Sir:

I am in receipt of your request for an opinion as follows:

"I beg to call your attention to the attached papers filed with this office in the matter of re-establishing the birth of Tatsuo Saito, also copy of communication addressed to L. E. Ross, State Registrar Vital Statistics dated September 11, 1925 and his reply thereto, together with letter addressed to him this day, notifying him of submitting the question to you of whether or not this Department can accept this Court Order to establish this birth.

The reasons for our failing to immediately comply are clearly set forth in the letter to Mr. Ross dated September 18th, 1925.

I am also enclosing a copy of a ruling for filing belated birth certificates adopted by the State Board of Health January 1916, and State Legislature of 1917.

Will you give us an opinion to guide this office?"

O P I N I O N

Section 21b of the Vital Statistics Registration Law makes no provision for restoring destroyed or lost birth certificates. I am satisfied therefore that you are technically right in refusing to record the decree in this case.

The procedure is purely statutory and the statute gives the full measure of your duties. See Opinions of Percy V. Long, 1908-9, p. 18.

Respectfully submitted,

CITY ATTORNEY

HEALTH OFFICER.

(3)

January 11th, 1926.

SUBJECT: Continuance of Mayor's Veto.

Dear Sirs:

I am in receipt of your letter of January 8th requesting as to whether or not the Mayor's veto on several permits granted by the Board of Supervisors may be carried along by the Board until such time as Supervisor Deasy, who is at present ill in the hospital, can attend the meeting of the Board and present his arguments regarding automobile and supply station and garage permits vetoed by the Mayor.

OPINION.

I direct your attention to Section 16, Art. II. Chap. I of the Charter, in which section it is provided:

> "The objections of the Mayor shall be entered at large in the journal of the Board, and the Board shall, after five and within thirty days after such bill or resolution shall have been so returned, re-consider and vote upon the same."

I am of the opinion that this provision of the Charter is mandatory, and that it is incumbent upon the Board of Supervisors to vote upon the veto of the Mayor within the thirty days prescribed.

In view of this fact, I am further of the opinion that notwithstanding the fact that the Mayor is willing to permit the vetoes to ride until Supervisor Deasy may return, that neither the Mayor nor the Board has the power to consent to the continuance.

Respectfully yours,

City Attorney.

Board of Supervisors.

(4)

January 11th, 1926.

SUBJECT: Attorneys' License Tax.

Dear Sir:

Under date of October 13th, 1925, you addressed a communication to my predecessor, Mr. George Hull, requesting an opinion as to the license tax to be paid by the General Counsel of the Western Pacific Railroad Company. Your communication asks an opinion as to the meaning of "annual gross receipts" as used in Section 74 of Ordinance 5132 (N.S.).

OPINION.

The General Counsel's duties are, admittedly, to advise the various boards, officials and departments of the Railroad in all legal matters; he is in charge of all of the legal affairs of the Company, and may, in his discretion, assume entire legal control of its affairs. It thus clearly appears that the General Counsel is employed because of his legal knowledge and receives his compensation in the form of a salary for practicing his profession as such an employed official.

The law is not confined in its application to attorneys engaged in public practice. It is general and all inclusive in its language.

In addition, the General Counsel engages in the practice of law as regards the public, and the contention is made that a license tax should be paid based upon receipts from such practice, exclusive of salary from the railroad company.

Inferentially, the legality of Section 74 of Ordinance 5132 (N.S.) is questioned. This form of license tax was upheld in Re Johnson, 47 Cal. App. 465.

The General Counsel of the Western Pacific is clearly not engaged solely as an employe, nor is he in the employ of a corporation engaged in the practice of the law, hence he does not come within the exemption clause of the ordinance.

> "That nothing in this section contained shall be deemed or construed as applying to any person engaged in any of the professions or occupations hereinbefore enumerated, solely as an employee of any other person, firm or corporation, conducting, managing or carrying on any such business, occupation or profession in the City and County of San Francisco. - As Amended by Ordinance No. 5930 (New Series)."

To hold that the General Counsel is not practicing his profession as a lawyer, would be to say that a resident physician of a hospital or hotel is not practicing the profession of a physician or

surgeon, and this might be extended so as to cover every classification enumerated in the ordinance. Plainly this was not the intent nor is it warranted in law.

It is my opinion that the license tax in this case should be upon the "annual gross receipts" derived from professional services, and this term embraces and should include all moneys received in the form of salary and fees.

Respectfully,

City Attorney.

Tax Collector.

January 12th, 1926.

SUBJECT: Taxation of Shares of Stock
of Foreign Corporation.

Dear Sir:

Under date of October 2nd, 1925, you wrote my predecessor in office, George Hull, Esq., asking an opinion as to the taxability of shares of stock of a Delaware corporation under the following circumstances.

FACTS.

This Delaware corporation is a holding company. Its shares are owned by residents of California, and represent ownership of shares of stock of a California corporation, all of whose property is situate within this State.

OPINION.

The shares of stock of the California corporation are not taxable because the property they represent is taxed in this State and taxation of that stock would be double taxation.

The stock of the Delaware corporation indirectly represents this same property, but those shares of stock are such personal property as was contemplated by the people of this State when on November 4th, 1924, there was passed an amendment to Article 13 of our State Constitution, which in substance is to the effect that such shares of stock, solvent credits, securities, etc., should be taxed as personal property, and that this tax should be upon the basis of seven per cent of its value when such property had been duly declared to the proper assessor.

The taxation of the shares of stock of the Delaware corporation is taxation of a separate piece of personal property from that of the shares of stock of the California corporation and is not double taxation such as is prohibited by our State Constitution.

Respectfully yours,

CITY ATTORNEY.

Assessor.

A

A

(5)

January 15th, 1926.

SUBJECT: Transfer of Hetch Hetchy Power Funds.

Dear Sir:

I am in receipt of your request for an opinion regarding right of the Board of Supervisors to transfer funds derived from the sale of power from Hetch Hetchy Hydro Electric plant, in which you state:

"Recently my attention has been called to the question of the legality of appropriating the revenue derived from the sale of Hetch Hetchy power to the General Fund, and I would be pleased if you will advise me whether, in your opinion, the Board of Supervisors had the authority or the power to transfer, by resolution or otherwise, the estimated $1,400,000.00 revenue from the sale of power to the General Fund."

OPINION.

I direct your attention to paragraph 1 of Sec. 16 of Article XII of the Charter, which is as follows:

> "Whenever any public utility shall be operated by the City and County, the receipts from such utility shall be paid daily into the City Treasury, and maintained in a special fund set aside for such utility. The Supervisors may, from time to time, make appropriations from such funds for the following purposes:
> (a) For the payment of the operating expenses of such utility;
> (b) For repairs and reconstruction;
> (c) For payment of interest and sinking fund on the bonds issued for the acquisition or construction of such utility;
> (d) For extensions and improvements;
> (e) For a reserve fund."

The provisions above quoted are the charter provisions applicable to the disposition of receipts from a public utility, and appear to be mandatory. I am of the opinion that the Board of Supervisors can appropriate the funds derived from the sale of power to the Pacific Gas and Electric Company only as provided in the section quoted.

Paragraph 2 of the same section provides for the disposition of money in the Reserve Fund - the paragraph is as follows:

> "Whenever the reserve fund shall exceed one-half of the payment for operating expenses in the preceding fiscal year, the Supervisors shall have the power to apportion such excess to the general fund."

As the Reserve Fund can only be established after all of the other items of expense mentioned in Subdivisions (a), (b), (c) and (d), have been provided for, and funds from this Reserve Fund can be transferred to the General Fund only when the former fund shall exceed one-half the payment for operating expenses of the utility for the preceding fiscal year, you are advised that, at this time the Board of Supervisors cannot transfer the amount of the estimated revenue from the sale of the power from the utility mentioned.

Respectfully,

City Attorney.

Auditor.

(6)

January 16th, 1926.

SUBJECT: Bi-monthly Payment of Fixed Salaries.

Dear Sir:

I have your request as to your rights to make bi-monthly payments of the salaries due to the members of the Police and Fire Departments.

OPINION.

I direct your attention to Section 1, Chapter IV, of Article III of the Charter, which reads as follows:

> "The salaries and compensation of all officers, including policemen and employees of all classes, and all teachers in the public schools, and others employed at fixed wages, shall be payable monthly."

This provision of the Charter is mandatory, and the salaries can be paid by you only as therein provided. You are therefore advised that the salaries of the members of the Police and Fire Department can be paid only once during each month.

This matter has heretofore received the very careful consideration of Hon. Percy V. Long, and on October 30th of 1914, after a careful investigation of the matter, he gave to your predecessor in office the same opinion as I have given to you. You will find this opinion reported in the Opinions of Percy V. Long for 1912-16 at page 713.

Respectfully,

City Attorney.

Treasurer.

(7

January 20th, 1926.

SUBJECT: Payment from earnings of Municipal Railway into Retirement System of amount due for Employes of Railway.

Sirs:

I am in receipt of a letter from your Committee, in which you state:

> "Under Sections 5E, 10 and 11 of Ordinance No. 5561 (New Series) Establishing the San Francisco City Employees Retirement System, the obligations of the city under the retirement system for current service as well as prior service, on account of Municipal Railway employees, are charged against and paid out of the revenues of the Municipal Railway.
>
> The Public Utilities Committee desires to be advised as to whether, in your opinion, this is a proper and legal charge against the Municipal Railway funds."

OPINION.

The ordinance mentioned in your letter has been adopted pursuant to the provisions of Art. XVII of the Charter. Various sections of the ordinance direct that the City and County shall contribute funds for the benefit of those coming within the provisions of the Retirement System. In Sec. 3 of the Article, referring to initial liabilities accruing under the Retirement Plan, we find the following language: "Provided that initial liabilities accruing under a retirement plan because of past service of employees in service at the time this amendment is adopted may be covered by annual appropriation of the Supervisors." The Article is silent throughout as to the source from which the moneys shall be contributed or appropriated to the System. Therefore, the Board of Supervisors would in any ordinance passed in conformity with the provisions of the Article, ordinarily have the right to specify from whence the contributions made for the benefit of any class of employees should come.

By Sections 5E, 10 and 11 of the ordinance, the Board has provided that such moneys as shall be paid into the Retirement System for the benefit of the employees of the Municipal Railway, shall be taken from the revenues of that utility. Query - Is this appropriation legal? Unless it contravenes the provisions of the Charter regarding public utilities, it is. In this regard I direct your attention to Sec. 16 of Art. XII of the Charter, which provides for the disposition of receipts of public utilities, in which section it is stated: "The

Supervisors may from time to time make appropriations from such funds (the receipts of the utility) for the following purposes:

a. For the payment of the operating expenses of such utility."

Is the payment into a retirement or pension fund, a part of the operating expense of the utility? Various Railroad Commissions and rate fixing bureaus throughout the country have from time to time answered this question in the affirmative, and the courts have sustained them. See

CONSOLIDATED GAS CO., OF NEW YORK vs. NEWTON, ATTY. GENERAL,

267 Fed. 231.

Where the court said:

> "Payment of benefits to sick or disabled employees, and pensions to superannuated employees, is prima facie a legitimate part of the cost of production, and within the discretion of the officers of the corporation."

I believe therefore that the Board of Supervisors have the right to specify by ordinance that the payments made to the Retirement System for the benefit of the employees of the Municipal Railway shall be taken from its earnings, and you are therefore advised, that as the ordinance now reads, the amount so paid is a proper charge against that utility.

Very truly yours,

City Attorney.

To Public Utilities Committee.

(8)

January 26th, 1926.

SUBJECT: Liability of City for Negligence of Employees.

Sirs:

I am in receipt of your letter of January 13th, in which you ask whether the Probation Committee of the Juvenile Court may order the sum of $75.00 paid out of the Detention Home Maintenance Fund to reimburse Mrs. Charles Powers for medical care made necessary through damage inflicted upon her by a city owned automobile driven by an employee of the Juvenile Detention Home.

OPINION.

The only ground on which Mrs. Powers could be paid any sum as compensation for the injury sustained by her as mentioned in your letter, would be upon the ground of the negligence of the employee of the city. The law is well settled that a municipality is not liable for the negligence of its employees.

See

KELLER vs. CITY OF LOS ANGELES, 179 Cal. 605,

MANNING vs. CITY OF PASADENA, 58 Cal. App. 666.

In view of the non-liability of the city, I can see no reason for expending the money of the city as compensation for the injury sustained by Mrs. Powers.

You are therefore advised that it will not be proper to pay to Mrs. Powers the sum mentioned, or any sum whatsoever, from the Detention Home Maintenance Fund, or from any fund whatsoever, for the reason that her demand is not a proper one against the City.

Respectfully,

City Attorney.

Probation Committee,
Juvenile Court.

(8)

January 26th, 1926.

SUBJECT: Liability of City for Negligence of Employees.

Sirs:

In reply to the verbal request of your Board conveyed to me by Dr. Hassler, as to liability for injuries sustained at the hands of one of the employees of your Department while in discharge of duty, I will state that I understand the facts to be as follows:

That one, Alice Wilcox, employed in your Department as a field nurse, while driving a department automobile in the discharge of the duties assigned to her, to wit, to visit one in need of emergency medical attention, injured one, Anna Austerdorff, by running into her with said automobile.

Further, that you wish to be advised as to the liability of the city on account of the injuries sustained by Mrs. Austerdorff; also, as to the personal liability of the members of the Board of Health, as well as the liability of the driver of the automobile.

OPINION.

In the matter of the liability of the city for the acts of its servants, the law makes a distinction between functions that are purely governmental and the functions that are proprietary. The city is liable for the negligence of its servants where the enterprise on which or in which they are engaged is a proprietary one, such as the conduct of a railraod, the running of a bus line, etc., but where the employee is engaged in a purely governmental function, there is no liability upon the city for the negligence of that employee. The Supreme Court of this State has sustained this contention in the case of

KELLER vs. CITY OF LOS ANGELES, 179 Cal. 605,

and in MANNING vs. CITY OF PASADENA, 58 Cal. App. 666.

As Miss Wilcox was engaged in a governmental function at the time the accident occurred, there is no liability upon the City for her acts.

As far as the personal liability of the members of the Board of Health is concerned, there is none, for the reason that the law is well settled that where ordinary care is used in the selection of an employee, those making the employment are not subject to any

liability for the negligence of that employee.

As to the liability of Miss Wilcox herself, it will depend entirely upon the fact as to whether or not she was negligent in the operation of the machine which she was driving.

You are therefore advised that neither the city, nor the members of the Board of Health are liable for any damage sustained by Mrs. Austerdorff, and that, as I have not before me all of the facts of the accident, I cannot at this time offer any opinion as to the liability of Miss Wilcox.

Respectfully yours,

CITY ATTORNEY.

Board of Health.

(10)

January 29th, 1926.

SUBJECT: Status of Money Appropriated by
1925-26 Budget to Board of Education.

Sirs:

I am in receipt of your letter of January 26th, as follows:

"The Finance Committee has under consideration the reserving of certain expenditures to meet $1,400,000 deficit. In this connection the question of use of approximately $675,000 unexpended in a special School tax, Item No. 1 in the Budget has arisen in the Board and also in the Committee.

The Committee desires your opinion by Friday of this week, if possible, as to the legal status of this appropriation, and please also advise the Committee if this particular item is subject to appropriation by the Board and if the appropriation can be reserved.

Also if the appropriation is not made for school repairs or school buildings can the money be used for General Fund purposes to meet a deficit."

OPINION.

As to legal status of the appropriation. Item No. 1 of the 1925-26 Budget is as follows: " (Appropriation 1) for plans and construction of new school buildings, additions and repairs to existing school buildings, furniture, the purchase of land for school purposes, a special tax on each one hundred of assessed valuation to produce -$1,050,000.00."

Whether we look upon this appropriation as made under the provisions of the Charter (Sec. 2, Chap. V., Art. VII), or under the general laws of the State (Political Code, Secs. 1830 to 1840), it is an appropriation raised by a special tax for the common school fund, and the Board of Education has jurisdiction over same. Sec. 9, Chap. III, Art. VII, Charter.

I am of the opinion that the $1,050,000.00 raised by this special tax, having been raised for the specific purpose mentioned, cannot be appropriated by your Board for other purposes, and for the same reason the appropriation cannot be reserved.

You also ask "If the appropriation is not made for school repairs or school buildings, can the money be used for general fund purposes to meet a deficit".

As it would appear that the appropriation mentioned was made for school repairs and school buildings, it cannot be used for general fund purposes to meet a deficit.

Respectfully yours,

CITY ATTORNEY.

To The Finance Committee.

(11)

January 30th, 1926.

SUBJECT: Employees of Adult Probation Board
are subject to the Provisions of the
San Francisco City Employees Retirement System.

Dear Sirs:

I am in receipt of your letter asking as to whether or not the Chief Adult Probation Officer is subject to retirement upon his attaining the age of seventy years, as provided in Article XVII of the Charter and the Ordinance of the Board of Supervisors enacted pursuant to the provisions of that Article.

OPINION.

As stated in your letter, Section 1203 of the Penal Code creates the Adult Probation Board, and provides for the appointment of a Chief Adult Probation Office, this appointment to be made by the Judges presiding in the departments of the Superior Court designated for the hearing and disposition of criminal cases, upon the recommendation of the Probation Board.

While the Charter of San Francisco contains no provision for the appointment of the Chief Probation Officer, and in fact is entirely silent as to the appointment of any of the officers or employees of this Board, the courts have decided that the Chief Probation Officer is an employee of the City and County.

See

NICHOLL vs. KOSTER,

157 Cal. 416,

where, quoting from page 423 of the opinion, the court said:

> "The Probation Officers in question are not officers of the State Government; they are minor officers of the local County Government."

The case just cited is one wherein Mr. Nicholl, the party affected by this opinion, brought an action against the Auditor of the City and County of San Francisco, to compel the Auditor to

allow his demand as an Assistant Probation Officer of the City and County, and the court held that it was a proper demand against the City, and that Mr. Nicholl was a minor officer of the local government. This ruling has been approved in the cases of

SATTERWHITE vs. GARRISON, 34 Cal. App. 734,

and in REEDE vs. HAMMOND, 18 Cal. App. 442.

There can be no difference between the Assistant Probation Officer and the Chief Probation Officer, for they both receive their appointment from the same source, and their duties are prescribed in the same Act which provides for their appointment. In view of the fact that Mr. Nicholl is an officer or employee of the City and County, we believe that he is subject to the provisions of the Retirement System.

Section 8½ of Article XI of the Constitution provides, "that it shall be competent in any charter framed in accordance with the provisions of that section, to provide by charter for the compensation, method of appointment, qualifications, tenure of office, and removal of deputies, clerks and other employees". This the Charter of San Francisco has done in various ways, one of them being by the enactment of Article XVII, providing for the retirement of aged and disabled city employees.

Your attention is directed to Section 1 of the Article quoted, wherein it is stated that retirement from the municipal service shall be compulsory at the age of seventy. It would appear to me that this practically fixes the age qualification of employees, and that no one who is over the age of seventy years is qualified to continue in the employment of the City.

I believe that the fact that Mr. Nicholl receives his appointment from a source that is not governed by charter provision is immaterial, for the reason that Sec. 8½ of the Constitution gives to the Charter the right to provide for either, the method or the appointment, or the compensation, or the qualifications of an employee, and therefore the employee might receive his appointment from sources independent of the Charter and still be compelled to have the qualifications provided by the Charter, one of which in this case is that the employee must not be over seventy years of age.

You are therefore advised that the Adult Probation Officer is a municipal employee within the meaning of Article XVII of the Charter, and can be required to contribute to the pension fund

provided for in the Retirement System, and can be compelled to retire upon attaining the age of seventy years,

Respectfully yours,

CITY ATTORNEY.

To the Adult Probation Board.

February 4th, 1926.

SUBJECT: The City is liable for Damages done by Fire Boats by reason of Collision with Coast Guard Harbor Launch.

Dear Sirs:

I am in receipt of your letter stating that there has been presented to your Committee the claim of the United States Government for $157.85 for damages done to a launch belonging to the United States Government by the Fire Boat David Scannell, and that the Committee desires to know if this claim is different from any claim arising from damage from fire apparatus.

OPINION.

Ordinarily, the City is not liable for damage done by its fire apparatus while in the operation of the City. However, there is a distinction drawn between the general laws which might be applicable to fire apparatus traveling about the City, and the law which would apply to a fire boat traversing the waters of the Bay. In the latter case, the liability is fixed by the general maritime laws, and while the courts have held that the general maritime law which would permit the libel of one boat for damages done to another, is not applicable where the boat is engaged in a governmental function, still, it is also held that the government or the municipality is liable in personam. In other words, that while the United States Government would not have the right to seize our boat as it would have the right to seize the boat of a private individual for damage done to its boat, it has the right to proceed against the city to recover the damage, by the proper action in court.

This principle has been established by many decisions of the court, and especially in the case of WORKMAN vs. MAYOR OF NEW YORK, decided by the Supreme Court of the United States, and reported in Vol. 45 U. S. Reports (Law Ed.) at page 314. In this case the facts were precisely the same as the facts presented to me in your communication, and the court held that the City of New York was responsible for the damage done by one of its fire boats that came into collision with a boat belonging to the United States Government.

You are therefore advised that the claim presented by

the Government and approved by the Fire Commission is a proper charge against the City.

I am returning you herewith the correspondence passing between the Board of Supervisors and the Fire Commission.

Respectfully yours,

CITY ATTORNEY.

To the Finance Committee.

(13)

February 5th, 1926.

SUBJECT: Contract cannot be entered into to pay Money out of succeeding year's revenues.

Dear Sirs:

I am in receipt of a letter from your Committee asking if a contract can now be entered into between the City and C. J. Keenan, et al, agreeing to reimburse said Keenan and associates for certain street work which they propose to do on Fillmore Street from Cervantes Boulevard to Marina Boulevard.

OPINION.

It would appear that by resolution adopted by the Board of Supervisors on August 24th, 1924, the City agreed to perform the work in question, and that Keenan and associates now agree to perform said work provided the City will enter into a contract with them to reimburse them for the amount expended, not later than July 15, 1926.

You are advised that such a contract would contravene the provisions of Sec. 18 of Art. XI of the Constitution, making it unlawful to incur indebtedness, in one year, to be paid for out of the revenues of the succeeding year, and therefore it should not be entered into.

I return to you the offer of Mr. Keenan made to your Board.

Respectfully yours,

CITY ATTORNEY.

Finance Committee.

February 5,1926.

SUBJECT: Award for Compensation by Reason of Accident Suffered by Employees of Playground Commission must be met With the Funds of that Commission.

Members:-

I am in receipt of your letter enclosing a copy of the findings and award rendered to Mrs. Margaret J. Morrisey by reason of the death of Edward B. Lane, an employee of your Commission, in which letter you asked as to whether or not this award is to be met from the funds of the playground or out of the General Fund of the City.

OPINION.

Sec.5, Art.XIV-A of the Charter of the City and County of San Francisco gives to the Playground Commission exclusive management and disbursement of all funds legally appropriated or received from any source for the support and equipment of the playgrounds, recreation centers, etc.

The Board of Supervisors in the tax levy of 1925-26 levied a tax of five cents on each one hundred dollars of the assessed valuation of the City for playground purposes, which levy produced a sum of three hundred and fifty thousand dollars. As Sec.10 of the Article mentioned provides that the Board of Supervisors shall levy a tax of not less than five nor more than seven cents upon each one hundred dollars assessed valuation upon all property in the City and County not exempt from taxation for playground purposes, it is my opinion that all demands against this Commission must be met out of the amount raised by this tax.

You are therefore advised that in my opinion the award made to Mrs. Morrissey should be met from the amount allotted to your Department in the tax levy of 1925-26 and not out of the General Fund.

I am returning herewith a copy of the award sent me with your communication and the correspondence passing between your Board and the Board of Supervisors.

Respectfully,

City Attorney.

PLAYGROUND COMMISSION.

(15)

February 15,1926.

SUBJECT: Fulton Street Frontage between
Hyde and Market Streets.

Members:-

Recently your Honorable Board requested an opinion as to the legal status concerning the alleged conflicting claims to frontage on the South line of Fulton Street between Hyde and Market Streets.

Your letter stated that certain property owners in that vicinity were claiming frontage on Fulton Street in addition to the Market Street frontage enjoyed by them.

The property involved is that which was purchased by the City and County in order that Fulton Street between Hyde and Market and Leavenworth Streets might be placed in its present condition.

The descriptions of the property purchased and sold by the City and County in that vicinity have been checked by the Engineering Department of the City and County and found to be correct.

Fulton Street between Hyde and Leavenworth Streets has never been formally dedicated, nor has there been, in my opinion any such dedication as is necessary to give right of frontage to property owners adjacent thereto.

This property was acquired as was all of the property now embraced in the Civic Center under a special provision of the Charter allowing the purchase of excess lands for Civic Center purposes. (Sec.10, Chap.II, Art.II).

It has been the manifest intention of the City and County to push to completion plans for Civic Center beautification and this intention is known,and has always been known,to purchasers of property in that vicinity. These plans,as tentatively drawn, provide for the building of a uniform series of colonade buildings which will serve as a walk way and be in conformity with the general scheme of Civic Center architecture.

This City and Count has retained ownership of all lands North of the southerly building or property line on Fulton Street between Hyde and Market Streets and it is my opinion that

the City and County of San Francisco owns such property for Civic Center purposes and has the legal right to erect thereon such structures as may be deemed best calculated to further the general scheme of the Civic Center.

From interviews with the various property owners affected we believe it entirely possible that an harmonious agreement may be reached as between such property owners and the City and County and in this way the property owners interest sufficiently protected and the interests of the Civic Center may be finally determined upon and advanced.

Respectfully,

City Attorney.

BOARD OF SUPERVISORS.

(16)

February 17,1926.

SUBJECT: The Issuance of a Permit to Operate as an Auctioneer is not a Condition Precedent to the Obtaining of a License from the Tax Collector.

Gentlemen:-

I am in receipt of your letter of January 6,1926, enclosing a letter addressed to Edward F. Bryant, Tax Collector, dated December 22,1925; a letter addressed by Edward F. Bryant,Tax Collector, dated December 23,1925; and a copy of a letter addressed to J. O. Low, Tax Collector, dated September 24,1912.

In your letter of January 8th you have requested the following opinion: "What we would like to be advised upon is whether or not an auctioneer whose license has expired must file with this Board an application for a renewal thereof before the Tax Collector can issue a new license."

OPINION.

Sec.2, Chap.V, Art.IV of the Charter of the City and County of San Francisco provides:

> "The Tax Collector must collect all licenses which may at any time be required by law or ordinance to be collected within the City and County."

Ordinance No.5132, New Series, a license ordinance of the City and County of San Francisco provides that the Tax Collector shall collect licenses payable to the City and County of San Francisco fixing the amounts and other incidental requirements. Nowhere is there a provision either in the Charter of the City and County of San Francisco, or in Ordinance No.6803, New Series, regulating the calling of auctioneers and the sale of property by auction, compelling the Tax Collector to require that a permit to act as an auctioneer be presented to him as a condition precedent to his granting a license to carry on the business of an auctioneer. Section 8 of Ordinance No.6803,New Series, provides:

> "It shall be unlawful for any person to engage in the calling of an auctioneer, or to conduct a public auction room without having first obtained a permit from the Board of Police Commissioners and without having first filed a bond and paid the license fee provided for in this or other ordinances."

This section dealing with the requirements exacted by the ordinance does not ordain that a permit must first be issued before a license tax can be paid. It simply sets forth that an auctioneer cannot engage in his calling legally without having paid the license provided for by law. In Section 12 of the ordinance we find:

> "Upon the revocation of the permit the license issued thereon shall immediately terminate or be suspended during such time as said Board shall determine."

It appears that the ordinance was drafted with the thought in mind that there was a provision in the ordinance compelling the presentation to the Tax Collector of a permit from the Board of Police Commissioners before he could issue a license but since the ordinance does not provide for the condition precedent of obtaining a permit it cannot now be read into the ordinance. However, of course, if a permit is revoked the license shall immediately terminate or be suspended as the Board of Police Commissioners may determine. The license ordinance heretofore mentioned is an ordinance for the purpose of obtaining revenue. The ordinance dealing with auctioneers is a regulatory ordinance. It was held in In re Guerrero, 69 Cal.88, and in Laurelle vs. Bush,17 Cal.App.409, that it was constitutional to provide in an ordinance that a permit be obtained as a condition precedent to the issuance of a license.

You are therefore advised that in my opinion the Tax Collector must accept license fees offered to him, and must issue a license regardless of what the action of the Board of Police Commissioners may be in the premises.

I am returning you herewith the correspondence hereinabove mentioned.

Respectfully,

City Attorney.

BOARD OF POLICE COMMISSIONERS.

(17)

February 26,1926.

SUBJECT: Leasehold Interests are Amenable and Subject to Taxation.- California School of Mechanical Arts.

Dear Sir:-

I am in receipt of a letter from your office asking for an opinion regarding a leasehold interest held by various people of property owned by the California School of Mechanical Arts.

OPINION.

The whole question involved is whether the leasehold interest referred to is subject to assessment and taxation under the tax laws of the State of California.

You are advised that such property is assessable and taxable and the following authorities and many more confirm this conclusion.

San Francisco vs. McQuin,67 Cal.110;
San Pedro etc.R.R.Co. vs.Los Angeles,180 Cal.18;
San Pedro etc. R.R. vs.Los Angeles,179 Pac.390;
Outer Harbor Co. vs.Los Angeles,49 Cal.App.121-127;
Constitution of California, Art.XIII, Sec.1;
Political Code of California,Sec. 3608.

Respectfully,

City Attorney.

ASSESSOR.

(1)

(18)

Feb. 26th, 1926.

In re Purchase of Bay View Tract Property

from A. Ferroggiaro.

Gentlemen:

Since your meeting of February 19th, I have made investigation of the above matter. I have been furnished with a report on the title, by the Title Insurance and Guaranty Co., a copy of which is hereto attached. This report adds little to what was already known by your Committee as well as to this office, and leaves the determination of the title to the property covered in the report impossible at this time, with the exception of portions of Keith Street and Egbert Avenue, which the report shows to be vested in A. Ferroggiaro.

It is not possible at this time to advise you that the title to the remaining streets is also vested in Mr. Ferroggiaro, for the reason that he has not a record title to them, claiming title thereto by adverse possession, and there has been no judicial determination of this possession, as there was regarding the portions of Keith Street and Egbert Avenue above mentioned. I will state, however, that if the facts on which Mr. Ferroggiaro claims title to the other streets are the same, as they were in the case which involved Keith Street and Egbert Avenue, he is also the owner of the other streets mentioned, and I am of the opinion that the courts will so decree.

The case regarding Keith Street and Egbert Avenue, in which Mr. Ferroggiaro was successful in obtaining a judgment, was vigorously defended on behalf of the City by my predecessor in office, Hon. Daniel J. O'Brien and Mr. Charles J. Peery representing Mr. Lull, and from an examination of the record of the trial in the lower court, and of the proceedings reviewing the trial in the District Court of Appeals, I am of the opinion that every available defense was interposed on behalf of the City.

I find in the files in my office a report of the California Pacific Title Insurance Company under date of March 15th, 1917, covering Keith Street and Egbert Avenue. The report differs little from the report of the Title Insurance and Guaranty Company hereto attached. Each reports that the only dedication of the streets mentioned is the recording of the map of the Tract, and the reference to the streets in various conveyances transferring title

to various portions of the tract. The Title Insurance and Guaranty Co. refers to the map made by C. S. Tilton 1899, on which the streets in question were designated as open public streets. If these streets at that time were not open public streets, the recording of the map would not make them so, and I am therefore of the opinion that the reference to this map cannot aid in determining the matter under inquiry.

I direct your attention to the concluding paragraph of the decision of the District Court of Appeal in the case brought against the city by Mr. Ferroggiaro, in which Judge Nourse says, that if even there was a sufficient dedication of the streets in question (Keith Street and Egbert Avenue), by the filing of the map or otherwise, that the failure to use the streets for a period of five years, prior to 1883, worked an abandonment under the law as then in force, and title thereto could be obtained by adverse possession. In that case the Court found that there was such an abandonment and such possession.

Therefore, I can advise you that in my opinion, should the facts be that Mr. Ferroggiaro was in possession of all the other streets for a period of five years prior to 1883, the court will adjudge that he now owns them irrespective of the recording of the maps mentioned.

The question of the possession by Mr. Ferroggiaro should either be determined by the courts or by your Committee, and in either case I will be pleased to co-operate to the end that this matter may be brought to an early conclusion.

Very truly yours,

CITY ATTORNEY.

To the Finance Committee.

(18)

San Francisco, February 24,1926.

No. - 201466 - REPORT

JOHN J. O'TOOLE, ESQ.,
City Attorney of the City and County of San Francisco,
City Hall, San Francisco,
California.

Dear Sir:-

Pursuant to the request of the Board of Supervisors asking for a report on the title to the following streets:

Donner Street from Railroad Avenue to Ingalls Street,
Egbert Street from Railroad Avenue to Ingalls Street,
Fitzgerald Street from Railroad Avenue to Ingalls Street,
Gilman Avenue from Railroad Avenue to Ingalls Street,
Keith Street from Carol Avenue to Gilman Avenue,
Jennings Street from Carol Avenue to Gilman Avenue,
Ingalls Street from Carol Avenue to Gilman Avenue.

We beg to submit the following:

Map entitled "Plan of the Property of the Bay View Homestead Association" filed in the office of the County Recorder of the City and County of San Francisco, State of California, June 19,1872, and recorded in Book "C" and "D" of Maps, at page 8 thereof, shows the above streets as open and public streets. The Official Map of the City and County of San Francisco compiled by C.S.Tilton, City Engineer, made official by Order 199, second series, the 6th day of July 1899 by the Board of Supervisors of the City and County of San Francisco, shows these streets to be open and public streets.

The property adjoining these streets is owned by some 30 or 40 different people in their McEnerney Suits establishing their title they either refer to the streets giving a mete and bound description or refer to the lot and block number, according to the Map of the Bay View Homestead Association, shown above. The Map of the Bay View Homestead Association which is recorded in the Recorder's Office, as shown above, was not destroyed in the conflagration of 1906 and is therefore the original map of the tract.

(18)

That portion of Keith street lying between the northeasterly line of Egbert Street and the southwesterly line of Fitzgerald avenue and Egbert avenue from the northwesterly line of Jennings street to Railroad avenue is the property of A. Ferroggiaro, he having acquired title by suit against the Board of Public Works and others, decision of which is reported in 52 Calif. Appellate Reports at page 393, Civil Suit No.3717, 1st Appellate District. We refer you to said decision for the details of his ownership.

If there is any further information you desire which may be disclosed by the records we will gladly furnish same to you.

Respectfully,

TITLE INSURANCE AND GUARANTY COMPANY
Per
DONZEL STONEY,
Manager.

(19)

Feb. 27th, 1926.

SUBJECT: Sale of City Lands.

Gentlemen:

I am in receipt of a letter under date of February 24th, from the Clerk of your Board, asking that you be advised if when city property is sold at public auction whether or not it is necessary that ninety per cent of the appraised value thereof be received. Attached to the letter is a copy of a letter from his Honor, the Mayor, addressed to your Board, reporting several sales of real estate owned by the city made by him at public auction in conformity with the charter provisions. In this letter the Mayor recommends the confirmation of five out of the six parcels sold, and has not asked for confirmation of the parcel described in his letter as Parcel Number 5.

OPINION.

I take it from the correspondence that the property sold was sold at public auction by the Mayor in conformity with Section 9, Chapter II of Article II of the Charter. This section provides that where real estate is sold at private sale, it cannot be confirmed by the Board of Supervisors unless the sum offered shall be at least ninety per cent of the appraised value thereof. There is no such limitation in the Article in regard to a sale at public auction, and as the sale mentioned in your letter was made at public auction, you are advised that the ninety per cent limitation does not apply.

I also note from your letter that the bidder for Parcel No. 5 claims that he is entitled to have the bid made by him submitted to the Board for confirmation. I direct your attention to the further provisions of the above mentioned section of the charter which provides that when a sale of property has been made by the Mayor, either at public auction or at private sale, he shall require from the person to whom the property is sold, a deposit amounting to ten per cent of the sum bid, and he shall immediately thereafter at the next meeting of the Board of Supervisors, report the fact of such sale with a statement of the sum bid, the name of the bidder, and a request that the Board confirm such sale. I note from the Mayor's letter that he has made no request that the Board confirm the sale of Parcel No. 5. On the contrary, he

specifically asks that no confirmation of the sale of this particular parcel be made.

While the Mayor makes this request upon the ground that the amount bid is less than ninety per cent of the appraised value of the property, and as I have said before, this limitation does not apply to sales made at public auction, nevertheless, in view of the request of the Mayor, the Board will be justified in refusing to report this particular piece of property for confirmation, for the reason that the above mentioned section provides that the Board of Supervisors may, in its discretion, confirm or refuse to confirm any sale. I am of the opinion that this language is broad enough to give to the Board power to refuse to report any bid submitted by the Mayor, whether the same bears his recommendation or not.

You are therefore advised that the ninety per cent limitation does not apply to sales made at public auction, and furthermore, that Mr. Cohn is not entitled to have his bid reported for confirmation, and that the Board is free to re-advertise the sale of the property in question.

Respectfully yours,

CITY ATTORNEY.

Board of Supervisors.

(20)

Feb. 27th, 1926.

SUBJECT: Damages to Property Owners for Closing Portions of Dehon Street and Harlow Street.

Gentlemen:

I am in receipt of a letter from the Clerk of your Board under date of February 24th, advising me that your Board has under consideration the matter of closing certain portions of Dehon and Harlow Streets, and that certain property owners owning property fronting on the portions of the streets which are not to be closed, have made a claim for damages by reason of the closing of the remaining portions of the streets, and that you desire to be advised whether such a claim would exist under the circumstances; and further, that if it should be determined that damage has been sustained by the property owners in question, and that the damage was a legal claim against the city, from what fund or funds the damage should be paid; and further, whether the damage should be fixed by the Board of Education or by the Board of Supervisors.

OPINION.

The law governing the procedure of closing streets within the City and County of San Francisco is found in Chapter III, Article VI of the Charter. Under the provisions of this Chapter the Board of Supervisors is given full power to extend, widen, straighten or close streets. The same chapter provides that the damage and expense of such opening, extending, straightening, or closing of any street may be assessed in whole or in part on property benefited, or that the said damage may be paid in whole or in part out of the revenues of the City and County.

The word "damage" used in the Chapter mentioned, unquestionably refers to damages occasioned by the taking of property, and has no application to the situation now before your Board. However, I am of the opinion that if any property owner can show damage by reason of the closing of any street on which his property fronts, that he is entitled to recover such damage. The Supreme Court of the State has determined this principle in the case of

EACHUS vs. L. A. CONS. ELEC. RY. CO.,

103 Cal. 614,

in which case the court says:

"The right of an owner of a city lot to the use of the street adjacent thereto, is property which cannot be taken from him for public use without compensation."

I have given careful consideration to the statements made in your letter, and also to the map showing the streets closed and the property fronting upon the unclosed portion thereof, and it is impossible for me to determine the amount of the damage sustained by the owners of the property, or even, whether they have sustained any damage. The amount of the damage should be determined either by agreement between your Board and the property owner, or, if such an agreement cannot be effected, then the property owner must have recourse to the courts to determine the damage.

Should it be determined either by your Board or by the courts that either of these property owners have sustained any damage, the amount thereof should be paid from the particular fund which has been set aside by your Board for the purchase of the property in which the closed streets are located. In this instance, I am informed that the property in question is being purchased for school purposes, and therefore you are advised that any damage which may have been sustained by property owners on account of closing the streets mentioned, is a proper charge against the fund for the purchase of this property by the Board of Education.

Before any damage can be paid to any of the property owners, proper claims must be presented and filed with your Board, in conformity with Section 8 of Chapter II, Article II, of the Charter.

Respectfully yours,

CITY ATTORNEY.

Board of Supervisors.

The Ordinance requires a beneficiary to have an insurable interest in the life of the person by whom he is designated so the law that "one may take out a policy on one's own life and designate any person one sees fit as beneficiary", is not applicable.

> "In order to have such an interest, the parties must be related by blood or marriage or the beneficiary must be dependent on the insured for support, must have a reasonable expectation of pecuniary benefit or advantage from his continued life, or there must be some contract between them, the fulfillment of which would be prevented by death. The insured has an insurable interest in his own life, and a creditor in that of is debtor.(citing cases)"
>
> Vol.4, Current Law.

> "It is only when the right of appointment of a beneficiary is unrestricted that the question of insurable interest can arise; when this is so, as the member is prima facie the insurer, and free to choose whom he pleases as the recipient of his bounty, he can designate whom he pleases. But it seems clear, on principle and authority, that when the charter limits the beneficiaries to certain classes, the member has no power to designate someone not coming within those classes." (Citing cases).
>
> Joyce on.Insurance, Sec. 729.

One who was merely the "protector of the deceased whenever he stood in need of protection" has no insurable interest in his life.

Bouvier's Law Dict. p. 613.

> "A mere friend has no insurable interest in a regular life policy, even though he is voluntarily made the payee by the insured." (citing cases).
>
> Joyce on Insirance, Sec.1071.

In a Michigan case, where it appeared that the beneficiary was in no way related to the insured, and had been described in the certificate as a "friend" of the member, and the statute under which the society was organized provided for the organization of societies to secure benefits "to the family or heirs of any member", it was held that the society might set up the want of insurable interest in the beneficiary, in defense of an action on the policy.

Mutual Benefit Assn.v. Hough, 46 Mich,473,
9 N.W. 497.

(21)

It has been held that a mere moral claim cannot constitute one a creditor with an insurable interest.

14 Ruling Case Law, Sec.101, (citing cases thereunder)

Under the California law, I find in Sec.2765 of the Civil Code a definition of insurable interest. None of the provisions of said section cover the precise status of Mr. Coltzan and therefore, he, not being qualified as having an insurable interest, cannot participate as a beneficiary under the Retirement System.

I accordingly advise you that the application of Mr. Bastian for the appointment of Mr. Coltzain as his beneficiary must be rejected.

I am returning you herewith as requested the change of beneficiary form and Mr. Bastian's letter.

Respectfully,

City Attorney

BOARD OF ADMINISTRATION,
SAN FRANCISCO CITY EMPLOYEES
RETIREMENT SYSTEM.

(22)

March 10th, 1926.

SUBJECT: Request of Carlo Matraia for Permission to top and cut certain trees on West side of Lyon Street.

Gentlemen:

I am in receipt of a letter from the Clerk of your Board under date of February 26th, 1926, requesting an opinion as to what Board or Department of the City and County of San Francisco has jurisdiction in the matter of the request of Carlo Matraia to obtain permission to top and cut certain trees on the west side of Lyon Street, between Vallejo and Green Streets, for the purpose of beautifying the adjacent property.

OPINION.

From an investigation of this matter, it is found that the trees referred to were planted several years ago in the street between property lines, permission first having been had from the Board of Public Works. The trees have since grown to such a height as to cut off the light and sunshine from adjacent property.

The law applicable here is to be found in the Charter, Section 9, Art. VI, Chap. I, which reads as follows:

"The Board of Public Works shall have charge, superintendence and control, under such ordinances as may from time to time be adopted by the Supervisors:

"Of all public ways, streets, avenues, lanes, alleys, places, courts, roads, etc., ... of the manner of their use; and of all work done upon, over or under the same."

It is also provided in said section that "the Board shall have exclusive authority to prescribe rules and grant permits, in conformity with the ordinances of the Supervisors", and that "without such permission in writing from said Board, no person shall do any of the acts in this section enumerated".

You are accordingly advised that the Board of Public Works has jurisdiction in the matter, and that the applicant,

(22)

2.

Carlo Matraia must obtain permission from said Board before he can top and cut the trees herein referred to.

Respectfully,

CITY ATTORNEY.

Board of Supervisors.

(23)

March 11,1926.

SUBJECT: Rights of Residents of California who Served in the Revenue Marine Service of the United States in Time of War.

Dear Sir:-

I am in receipt of your request for an opinion under date of March 8th, as follows:

> "Is the United States Cutter Service considered a part of the U.S. Navy, and is a discharge from such service of any member who served in same during war-time entitled to veterans' exemption under Section 1½ of Article 13, of the Constitution of the State of California?"

OPINION.

The United States Cutter Service is not a part of the United States Navy. It is no more a part of the United States Navy than is the United States Army a part of the United States Navy. While the Secretary of the Navy has control of the Navy Department and the Secretary of War has control of the Army, the Secretary of the Treasury has control of the United States Revenue Cutter Service. This embraces the Revenue Marine service mentioned in Article 13, Section 1½ of the Constitution of the State of California.

> See U.S.Compiled Stats.1918, 8459½-8, paragraphs 1 to 65, page 1335, et seq.

Any resident of the State of California who was a member of this service and received an honorable discharge therefrom or who has been released from active duty under honorable conditions after war time is entitled to the veteran's exemption provided for in the aforesaid section.

Respectfully,

City Attorney.

JWW ASSESSOR.

(24

March 12,1926.

SUBJECT: Rights of Husband and Wife to Tax Exemption on Account of Military Service.

Dear Sir:-

I am in receipt of your request for an opinion under date of March 8th, as follows:

> "Where the real estate or other property assessed at more than $5,000 stands in the name of the husband and wife exclusively, and husband or wife claim veterans' exemption on same on the ground that it is community property, is he or she entitled to exemption on his or her community interest, providing such interest does not exceed $5,000 or more and in cases where property stands in the name of husband or wife and we have not allowed such exemption for previous years, is he or she entitled to refund on such claimed community interest for all taxes paid on same; and how far back can such refund be claimed?"

OPINION.

Art. XIII, Sec. 1½ of the Constitution of the State of California provides:

> "The property to the amount of one thousand dollars of every resident in this state who has served in the army, navy, marine corps, or revenue marine service of the United States in time of war, and received an honorable discharge therefrom or who has been released from active duty under honorable conditions, or lacking such amount of property in his own name, so much of the property of the wife or any such person as shall be necessary to equal such amount; - - - - - - - - - - - - - - - - shall be exempt from taxation; provided, this exemption shall not apply to any person named herein owning property of the value of $5,000 or more, or where the wife of such soldier or sailor owns property of the value of $5,000 or more."

From a reading of the foregoing section it may readily be determined that where either the husband or the wife has separate property, in the amount of $5,000 or more there can be no exemption. A veteran may be the owner of separate property and community property. He may have the community property in his wife's name or in his own name. If the community property has been conveyed to the wife by an instrument in writing the presumption is that it is her separate property and that it is not community property (Sec.164 C.C.)

If the conveyance is to a married woman and her husband the presumption is that the married woman takes the part conveyed to her as a tenant in common, and therefore the husband and wife would each have an undivided half interest in it. (Sec.164 C.C.)

Assuming a situation where the wife of a veteran owns separate property of the value of $5,000, or more, and the husband owns property of a less amount than the sum of $5,000, there would be no exemption. The converse of this is also true. However, if the husband was the owner of property either separate or community worth less than $5,000, and the wife was the owner of separate property worth less than $5,000 the privilege would still hold, although the total of both might be in excess of $5,000.00.

A wife's interest in the community property is a mere expectancy and nothing more. (Roberts v. Wehmeyer,191 Cal. 601; U.S. of America vs. Robbins U.S.Supreme Court). Therefore the community property cannot be divided for assessment purposes, and must be considered for this purpose to be the property of the husband.

In the event that you have not permitted exemptions in previous years which ought to have been allowed, a refund can be claimed by the taxpayer for all taxes erroneously or illegally collected. (Sec.3804 Pol.Code). Such refund can be claimed as far back as three years. In other words, there is a three year limitation during which time a verified claim must be filed after the making of the payment of taxes sought to be refunded. Provided, however, the veteran must have made application for exemption in each year.

See- Outer Harbor Dock & Wharf Co.vs.L.A.
49 Cal.App. 120; 193 Pac. 137;
Stewart Law & Collection Co.vs. Alameda
County, 142 Cal.660; 76 Pac. 481.

Respectfully,

City Attorney

THE ASSESSOR.

(25)

March 13,1926.

SUBJECT: Affidavit on Veteran's Exemption Claim.

DearSir:-

I am in receipt of your request for an opinion under date of March 8th, as follows:

"Must claimants file a separate affidavit as to such community interest in addition to his veteran's affidavit or will clause contained in our veterans' affidavit and underlined, namely, that all the property in the annexed property list is owned by the applicant - by the applicant's wife - by the applicant and his wife, suffice for this office to allow a claimed community interest."

OPINION.

No separate affidavit is necessary. The use of the words "by the applicant" covers both husband's separate property and the community property.

A separate affidavit with regard to community interest is not necessary since community property is the property of the husband and a wife has only an expectancy in it.

Roberts v. Wehmeyer,191 Cal.601;
U.S.of Am. v. Robbins,U.S.Supreme Court.

Respectfully,

City Attorney.

THE ASSESSOR.

(Exs.)

26

Mar. 15th, 1926.

SUBJECT: Taxation of Stocks and Bonds.

Dear Sir:

Under date of February 27th last you addressed a communication to this office requesting an opinion as to the following:

> "Shall stocks and bonds that are taxable under the assessment laws of this State be considered as personal property and taxed as such as set forth in Sec. 10 of Art. XIII of the Constitution of the State of California, or must we, in assessing such property, treat it in the same class as moneys and solvent credits which have their situs at the domicile of the owner."

OPINION.

Stocks and bonds are personal property and are classified as "intangible" personal property, that is to say, they are easily kept within a small compass, and for convenience and sound business reasons follow the situs of the owner thereof, and are therefor taxable at the owner's domicile, regardless of where such stocks and bonds may be situated.

Personal property that has become commingled with an industry or an enterprise, or which is used in the operation of a business or industry, is taxable at the place where it is located only, but this does not apply to stocks and bonds.

Stocks and bonds are, under the laws of California, taxable at the domicile of the owner, and in accordance with Sections 3617 to 3627A of the Political Code, as amended in 1925.

You ask the further question: "A resident of this city and county does own but keeps stocks and bonds in a safe deposit box outside of this State. Being outside the jurisdiction of this office should they attend the person and be taxed at his domicile?"

I have already answered the foregoing question in the affirmative, but will again say that it has been specifically decided that where a man living in New Hampshire owned stocks, bonds and notes which are kept in a safe deposit box in Minnesota, the property was taxable in New Hampshire.

(26)

CROSBY vs. TOWN OF CHARLESTOWN (N. H.)

96 Atl. 1043.

To the same effect.

MACKAY vs. CITY AND COUNTY OF SAN FRANCISCO,

128 Cal. 678.

Respectfully submitted,

CITY ATTORNEY.

Assessor.

A

B

March 15,1926.

SUBJECT: Taxation of Bail Money.

Dear Sir:-

In response to your recent inquiry as to your right to assess money deposited as bail (security for appearance in criminal cases) and also as to your right to subject to taxation moneys derived from estates in the hands of the Public Administrator you are informed:

OPINION

In both of the above instances such funds should be assessed for taxation purposes and such assessment and taxation should be levied against and collected from the trustee thereof.

Bail money is deposited in a special fund with the clerk of this City and County and such official acts as trustee of such funds and you may assess such funds while in the hands of such official and the said official should deduct the amount of taxes levied therefrom and pay the same to the proper officials of our City and County.

The Public Administrator likewise acts as trustee for moneys that come into his hands by reason of the probating of estates and you are justified in assessing such funds while in his hands and said Public Administrator should deduct such taxation from said funds and pay the same to the proper official of our City and County.

> "Whenever money, stocks or bonds are deposited with a trustee who is a resident of the City and County of San Francisco, State of California, such money, stocks or bonds may be legally assessed for taxation purposes by the City and County of San Francisco and such levy should be made against the said trustee holding the same.
>
> Mackay vs. City and County of S.F
> 128 Cal.678.

Stocks or bonds are taxable under the provisions of Secs. 3617 to 3627 a of the Political Code as amended in 1925. Money deposited as bail is not affected by the foregoing provisions.

Respectfully,

B

THE ASSESSOR. City Attorney.

(27)

March 16,1926.

SUBJEC: Commitment of Feeble Minded
Persons Under Juvenile Court
Law - Basil Colera re. Albertinum Orphanage.

Gentlemen:-

I am in receipt of your letter of February 26th,1926, as follows:

"In 1920 the Albertinum Orphanage, located at Ukiah, California, presented petition to the Superior Court of that County asking that Basil Colero be found feebleminded and committed to the State Hospital at Sonoma with the court of Mendocino County complying with that request, order of commitment issuing on or about the 25th day of March,1921.

The minutes of the Superior Court of said County in Book 18, page 167, show the following order:
'In the Matter of Basil Collero, a Feeble-minded Person: Upon motion of the Probation Officer it is hereby ordered that this matter be and the same hereby is transferred to the City and County of San Francisco, and it is further ordered that the Clerk transmit a certified copy of all the proceedings had in this matter to the City and County of San Francisco.'

Under date of December 16,1925 the Probation Officer of Mendocino County wrote that careful search of the records of the Juvenile Court of Mendocino County failed to indicate that at any time the case of Basin Colero had been up for hearing before that court.

San Francisco County has been supporting this boy since the time he was committed to the Sonoma State Home, that is, until recently when in my capacity as County Agent I discovered that this County did not appear to be legally responsible for the support of the child and requested the Auditor to withhold payments in behalf of said person which for some three months past has been done.

While it is true that section 13 of the Juvenile Court act of this State provides for the transfer of both the person and case of any minor before the Juvenile Court from one county to another, yet I do not know of any other law within the State of California that permits transfer, nor do I know of any law which would permit Mendocino County to commit a person to the State Hospital at Sonoma, directing that charge for the support of said person run

against our County.

While it may be true that Basil Colero prior to his going to the Alberginum Orphanage was resident in San Francisco and while under the Juvenile Court Act it might have been appropriate step to take to transfer the case to San Francisco County, I have in mind complications that will result if, without protest, we accept responsibility forced on us by Mendocino County were such procedure to be followed in all instances and I am, therefore, asking if you will indicate to me whether or no law exists to justify the action taken in this case by Mendocino County to the end that I may recommend payment by the City and County of San Francisco for the care of this child if you find justice in Mendocino's action, or to the contrary in case you do not find justification for so doing."

OPINION.

Section 13, Act 3966, Juvenile Court Law, General Laws of California, 1923, page 1549, provides:

> "Whenever a petition has been filed in the juvenile court of a county other than that of the residence of a person coming within any of the provisions of this act, or whenever, subsequent to the filing of a petition in the juvenile court of the county where said person resides, the residence of said person is changed to another county, the entire case may be transferred at any time to the juvenile court of the county wherein said person then resides, and such court must take jurisdiction of the case upon the filing with it of such order."

This section further provides:

> "Whenever a case shall be transferred thereunder, the order of transfer shall recite (a) each and all the findings, orders or modification of orders that may have been made in said case, and (b) that said person resides in or has removed to the county to which said matter has been transferred and (c) to said order of transfer shall be attached a certified copy of the original petition in said matter. Such transfer shall be accompanied by a summary of all the facts in the possession of the court or probation officer covering the history of said person."

(27)

In view of the foregoing section it is my opinion that Basil Colera should have been returned to San Francisco by the Albertinum Orphanage, assuming, of course, that he was sent originally to the Albertinum Orphanage from San Francisco. He should then be made a ward of the Juvenile Court of the City and County of San Francisco, and then sent by the Juvenile Court of the City and County of San Francisco to the Albertinum Orphanage.

It appears that the Superior Court of Mendocino County ordered the case transferred to the City and County of San Francisco but that the order of transfer did not contain the necessary recitals. The records of the Superior Court of Mendocino County should show that Basil Colera is a resident of San Francisco. While the eventual result of this matter will undoubtedly be that the Albertinum Orphanage will again have the custody and care of the child nevertheless the proper procedure is to have the child committed from San Francisco.

Respectfully,

CITY ATTORNEY.

JUVENILE COURT.

(28)

Mar. 16th, 1926.

SUBJECT: Payment of Burial Expenses of Widow of Soldier or Sailor.

Dear Sirs:

I am in receipt of your letter under date of March 13th, desiring to know if the burial expenses of an indigent widow of a sailor, said widow being a resident of the City and County of San Francisco but having died in the County of Marin, is payable by the City of San Francisco or by the County of Marin.

OPINION.

The Act of March 15th, 1889, provides for the payment by the county of the burial expenses of an indigent soldier or sailor, or the widow thereof. Section 2 of the Act provides that where the deceased was a resident of one county and died in another county, the county in which the death occurred shall have a claim against the county in which the deceased was a resident, for the amount of the burial expenses.

Under these conditions, to compel the County of Marin to pay the burial expenses, and then to present their claim to this City and County, would be an idle act, and you are advised that as long as the expenses of the burial would have to be paid eventually, you may pay them directly to the undertaker who made the burial.

I herewith return you the claim of the undertaker, together with death certificate, pension certificate, and other documents forwarded to me with your letter.

Respectfully,

CITY ATTORNEY.

Finance Committee.

28-a

A

Mar.17,1926

Mr. John W. Rogers,
Clerk of the Public Utilities Committee,
Board of Supervisors,
City Hall,
San Francisco,Cal.

Dear Sir:-

Your letter of the 5th Inst.containing the hereinafter stated questions was duly received.

> "Is the city required, under the terms of the Duboce Tunnel Ordinance, to operate electric cars, or is it merely required to furnish transportation? In other words, could the city, if it so desired, operate motor buses through the tunnel instead of electric cars?"

In answer to your first question, you are advised that under Resolution No.2003, New Series, known as "Tunnel Construction and Acquisition of Lands", approved June 3rd, 1923, it is enacted:" * * * * * * to provide a way for rapid transit between the two sections of said City and County aforementioned, for one or more street car lines, in accordance with and subject to the provisions of Chapter VIII of Article VI of the Charter of said City and County." The provision of the Charter referred to applies to "a street or other railroad" and "street railways". Nothing is said as to the motive power.

In answer to your second question, the words "street railways" have been construed many times by the Supreme Court of the State of California.

RAILROAD COMMISSIONERS vs. MARKET ST.RAILWAY,
132 Cal.677.
SIMONEAU vs. PACIFIC ELECTRIC RAILWAY COMPANY,
115 Pac.320.

and in many other cases. In the last cited case the California Supreme Court refers to a Florida decision, in which it is held

> "The term street railway applies only to such roads, the rails of which are laid to conform to the grade and surface of the street, * * * * which carries no freight

A

but only passengers, from one part of a thickly populated district to another, in a town or city and its suburbs."

In McNAB vs. UNITED RAILWAYS, 51 Atl. 421, it was held that whether or not a railway is a street railway does not depend on the motive power. In that case, the Court was considering electric and steam propelled cars.

In VALE vs. BOYLE, 179 Cal. 180, it was held, in substance, that automobile buses constitute part of a public utility.

There is now pending in the Federal Court of the Ninth Circuit, an action wherein the United States Government has endeavored to impose an income tax on the operation of the bus lines connecting with the city's municipal street railway lines, and the question of whether the buses constitute an actual part of the Municipal Railway system will soon be determined by that court.

Apart, however, from any legal authority concerning the right of inhibition to operate automobile buses, your attention is respectfully directed to the fact, that the City Engineer's office advises me that the Duboce Tunnel was not designed for the purpose of accomodating automobile buses; the width of the tunnel is not sufficient to accomodate them; there is no provision made for necessary ventilation where automobiles are in operation to take care of the monoxide gas; it would be unsafe to operate automobile buses in the tunnel as it is now designed, and the specifications prepared for bidders on the work of the Duboce Tunnel were prepared for the purpose of street railway lines and not automobile buses. For the actual physical difficulties to be encountered in the operation of auto buses, you are respectfully referred to the City Engineer's office for the details.

It is my opinion that if automobile buses are used in the Duboce Tunnel you would defeat the legislative intent of the Board of Supervisors, which was to operate one or more street car lines, and not automobile buses. As you have, or will have before the project is completed, taken private property for the purpose designated in the resolution of the Board of Supervisors referred to in this letter, you must use that property so taken for the purpose designated.

Yours truly,

JOHN J. O'TOOLE
City Attorney

By
Assistant City Attorney

March 19,1926.

SUBJECT: Securing Permit by Laundries.

Gentlemen:-

Responding to your communication dated March 12,1926, wherein you ask my opinion as to the application of Ordinance No. 3300 (New Series) to the laundry of Gin Neh, located at 23 Sanchez Street, this City and County, you are advised:

OPINION.

Ordinance No.3300 (New Series) was duly and regularly passed pursuant to the police power legally vested in our Board of Supervisors.

In substance it provides:

"It shall be unlawful for any person,firm, corporation or association of persons to establish, maintain,operate or carry on the business of a public laundry or a public wash-house - - - - - - - without first having obtained a permit - - - - ".

Laundries are legitimate subjects of regulation under the police power.

Ex Parte Moynier,65 Cal.33;
Ex parte Quong Wo, 161 Cal.220.

It is well settled that all property is held subject to the lawful exercise of the police power and therefore, the fact that Gin Neh has heretofore operated a laundry at said premises without a permit is of no consequence.

Ex parte Quong Wo.161 Cal.228;
Grumbach v. Lelande,154 Cal.684;
Odd Fellows Cem.Assn.vs.City and County of S.F.140 Cal.235;
Laurel Hill Cem.vs. City and County of S.F. 152 Cal.475.

The words "maintain, operate and carry on" compel the securing of a permit for the operation or maintenance of a laundry at the site in question and operate in future. The ordinance has no retrospective features but does compel the securing of a permit for future operation.

The ordinance in question was at the time of its adoption submitted to City Attorney, Hon. Percy V. Long, and the question now asked was given his careful consideration, and I therefore quote you the expression of his opinion on the matter:

> "Therefore an ordinance which seeks to regulate the business of conducting a public laundry or washhouse by requiring a permit from the Board of Supervisors, in order to pass the scrutiny of the Courts, must not discriminate between existing businesses and those to be established after the adoption of the ordinance; that is to say, it must be uniform and operate equally upon all those engaged in such business."

You are therefore advised that the ordinance in question insofar as a permit to maintain a laundry applies to those laundries which were in existence prior to its adoption, as well as to those established subsequent thereto.

Respectfully,

City Attorney.

BOARD OF SUPERVISORS.

The evidence in question was at the time of its admission objected to by Atty. Gen. Jerry V. Long, but the question was ruled upon favorably by the court, and I therefore quote per the explanation of his opinion on the matter:

"Therefore on evidence which seeks to regulate the evidence of something a public remedy or restrains by requiring a permit from the Board of Supervisors, in order to pass the scrutiny of the courts, must be identical between evidence and those to be established after the adoption of the ordinance; that is to say, it must be uniform and operate equally upon all those engaged in such business."

Its use therefore advised that the ordinance in question is a result to maintain a lawful applied to those instances which were in existence prior to its adoption, as well as to those established thereafter.

(30)

March 19,1926.

SUBJECT: Right of Board of Education
to Pay Claim of San Mateo
Junior College District.

Gentlemen:-

I am in receipt of your request for an opinion concerning the question of whether or not it is mandatory on the part of the Board of Education to pay the claim of the San Mateo Junior College District, amounting to the sum of $5540.80, tuition fees for San Francisco pupils during the years 1924-25, and whether or not this bill could properly be paid out of the Public School Fund if the Board of Supervisors drew a demand for it.

OPINION.

There is no question about the effectiveness of the Junior College Act. Section 15 of the Act of May 27,1921, providing for the organization of the Junior College Districts is fully effective. (See opinion of City Attorney, dated Aug.3,1925).

The general law as well as the Charter of the City and County of San Francisco provides for the revenue and expenditures for and by the public school system. The Junior College students are a part of the public school system, and are entitled to the benefits and privileges of the Junior College Act. This Act makes mandatory the payment of certain charges by one county to another, where Junior College Students of the former attend the college maintained by the other.

It is to be presumed that the Board of Supervisors in providing for the maintenance and operation of the public school system must have had in mind the necessary costs of these particular students, and not having made a special levy for their maintenance included the item in the general allowance to the Department.

I am therefore of the opinion that it is mandatory on the Board of Education to pay this claim, and that it could and should be paid out of the Common School Fund of San Francisco.

Respectfully,

City Attorney.

BOARD OF EDUCATION
BOARD OF SUPERVISORS.

March 19,1914.

SUBJECT: Right of Board of Education
to Pay Claim of Day Notes
Junior College District.

Gentlemen:-

I am in receipt of your request for an opinion concerning the question of whether or not it is mandatory on the part of the Board of Education to pay the claim of the Day Notes Junior College District, amounting to the sum of $600.00, matured loans for the purchase of grounds during the years 1913-14, and whether or not this bill could properly be paid out of the public School Fund if the Board of Supervisors drew a demand for it.

[illegible]

There is no question about the validity of the Junior College Act. Section 12 of the Act of May 17,1911, providing for the organization of the Junior College districts is fully effective. [illegible] (Act 1911).

The general law as well as the Charter of the City and County of San Francisco provides for the revenue and appropriations for use by the public school system. The Junior College districts are a part of the public school system, and are entitled to the benefits and privileges of the Junior College act. This is merely mandatory the payment of warrants drawn by one county to another. Where Junior College districts or the former school the college maintained by two other.

It is to be presumed that the Board of Supervisors in providing for the maintenance and operation of the public school system must have had in mind the necessity needs of these revolutionary students, and not having made a special levy for their maintenance included the item in the general allowance to the Department.

I am therefore of the opinion that it is mandatory on the Board of Education to pay this claim, and that it could not [illegible] be paid out of the Common School Fund of San Francisco.

Respectfully.

City Attorney.

BOARD OF EDUCATION
[illegible] OF INSTRUCTION.

(37)

Mar. 23rd, 1926.

SUBJECT: Taxation of Bail Money

Public Administrator Deposits

County Clerk's Special Fund.

Dear Sir:

I am in receipt of your inquiry as to whether bail (security for appearance in criminal cases), money deposited with Treasurer by Public Administrator pursuant to Sec. 1737 Code of Civil Procedure, and moneys deposited in County Clerk's Special Fund, are to be assessed as solvent credits, and are subject to the limitations prescribed by sections 3627 and 3627 A of the Political Code, or at their cash value.

OPINION.

All of these funds are to some extent in the custody of the law, the Treasurer holding the respective amounts in trust for the respective owners. None of these amounts are solvent credits.

BESSALO vs. CITY OF LOS ANGELES,

176 Cal. 597.

In the case of bail the money is presumed to be the property of the person depositing the same held in trust to await the happening or non-happening of a certain event. Public Administrator deposits are held in trust for the heirs of the respective estates from which same may have been deposited, and should be assessed in the same manner as if the money was actually in the hands of the Administrator. The right to assess property in the hands of a trustee is a proposition too well settled to need either comment or authority to support it.

(3)

You are therefore advised that Bail money and Public Administrator deposits are subject to assessment, and that these amounts are not subject to the limitations mentioned in Sections 3627 and 3627 A of the Political Code.

In regard to the County Clerk's Special Fund. While I have not been advised as to the precise nature of the moneys constituting this fund, I presume that it is money in litigation or deposits made with the County Clerk under the direction of the Court. Your attention is directed to Section 3647 of the Political Code, which expressly provides for the assessment of this character of property. You are also advised that these deposits are not subject to the limitations of Sections 3627 and 3627 A of the Political Code.

Sincerely,

CITY ATTORNEY.

Assessor.

32

Mar. 25rd, 1926.

SUBJECT: Duty of Board of Education to Maintain the Grounds Surrounding Public Schools.

Dear Sirs:

A verbal request has been made upon me both by the Board of Education and the Board of Park Commissioners for my views regarding the above subject.

OPINION.

On September 4th, 1925, my predecessor in office, Honorable George Lull, gave attention to the same matter, and on that date advised both the Board of Education and the Board of Park Commissioners that the maintenance and improvement of grounds surrounding school buildings was under the jurisdiction of the Board of Education, the necessary work to be done by the Board of Public Works at the request of the Board of Education.

I am of the opinion that both the reasoning and conclusion of Mr. Lull in the premises are correct, and you are therefore advised that the matter of the maintenance and improvement of grounds surrounding the school buildings is not within the jurisdiction or supervision of the Park Commissioners, but is to be done by the Board of Public Works upon the request of the Board of Education.

Respectfully,

CITY ATTORNEY.

Board of Education.

Board of Park Commissioners.

Sec. Navy, Japan.

Subject: Duty of Japan to Surrender to Allies

The Colorado Representative Public Accounts.

Dear Sir:

I beg to inform you that I am in receipt of your letter of the 15th inst. in which you request me to [illegible] the Japanese Government to surrender to the Allies.

In reply to your letter, I am pleased to say that I have already done so. I have already written to the Japanese Government, and I am sure that they will comply with my request. I am also sure that the Japanese Government will comply with my request. I am sure that the Japanese Government will comply with my request.

I am of the opinion that the Japanese Government will comply with my request. I am sure that the Japanese Government will comply with my request. I am sure that the Japanese Government will comply with my request.

Respectfully,

[illegible]

[illegible] of Commerce.

[illegible] of Navy Department.

(32)

Mar. 29th, 1926.

SUBJECT: Inspection of Records.

Gentlemen:

Under date of March 26th, a communication was addressed to my office from your Department, asking as to whether or not the emergency hospital records must be kept open for public inspection, and in reply thereto, you are informed:

OPINION.

Section 13 of Article XVI of the Charter of the City and County reads as follows:

"Sec. 13. All books and records of every office and department shall be open to the inspection of any citizen at any time during business hours. Certified copies or extracts from said books and records shall be given by the officer having the same in custody to any person demanding the same, and paying or tendering ten cents a folio of one hundred words for such copies or extracts; but the records of the Police Department shall not be subject to such inspection except permission be given by the Police Commissioners or by the Chief of Police."

In view of the foregoing provision, I am of the opinion that it will be impossible to deny public inspection of the records of Emergency Hospital.

Respectfully,

CITY ATTORNEY.

Department of Public Health.

Mar. 30th, 1926.

SUBJECT: Collection of License Tax of

Real Estate Dealers.

Dear Sir:

Under date of March 17th, 1926, you ask if a license tax should be imposed upon a person in the business of selling real estate when such dealer has an office for so doing within the City and County of San Francisco. You further state that some realty dealers seek to evade the payment of this tax by claiming they are exclusively engaged in the sale of property owned by them.

OPINION.

The power of levying taxes upon businesses, professions and occupations comes from Section 1, Article II, Chapter II of the Charter of the City and County of San Francisco, which reads as follows:

> "Section 1. Subject to the provisions, limitations and restrictions in this charter contained, the Board of Supervisors shall have power:
>
> 15. To impose license taxes and to provide for the collection thereof; but no license taxes shall be imposed upon any person who, at any fixed place of business in the City and County, sells or manufactures goods, wares or merchandise, except such as require permits from the Board of Police Commissioners as provided in this Charter."

The tax above set forth is a tax for revenue, and as such is constitutional. It is based upon the theory that a business or occupation conducted in an office in the City and County of San Francisco shall pay its just share of the revenues needed by the City and County of San Francisco, for the purpose of providing for the protection and comfort and convenience of the residents and inhabitants of this city and county, such as fire and police protection, streets, etc.

IN RE JOHNSON, 47 Cal. App. 465 (468-469).

Whether a person is engaged in selling property owned outright by himself, or whether he is engaged in selling property owned by others, is immaterial under the terms of Ordinance No. 5132, New Series, Section 11:

> "Every person, firm or corporation engaged in the business of buying or selling real estate or houses, or collecting rents, shall pay a license as follows:
>
> First - Those whose commission or fees are not less than ten thousand (10,000) dollars per quarter, fifty (50) dollars per quarter.
>
> Second - Those whose commissions or fees are less than ten thousand (10,000) dollars and not less than five thousand (5,000) dollars per quarter, thirty (30) dollars per quarter.
>
> Third - Those whose commissions or fees are less than five thousand (5,000) dollars per quarter, ten (10) dollars per quarter."

The location of the property dealt in is also of no consequence, as it is the maintenance of the office and carrying on of the business in the City and County that subjects the dealer to taxation.

The ordinance clearly states that <u>any person engaged in the business of buying or selling real estate shall pay a license</u>, and uses a commission or fee basis for the ascertainment of the amount of license tax to be paid.

A person engaged in the sale of property owned exclusively by himself receives no commissions and therefore would, in my opinion, pay the minimum license.

Respectfully,

CITY ATTORNEY.

Tax Collector.

(35)

35

April 3rd, 1926.

SUBJECT: Authority to Carry Automobile Insurance.

Dear Sirs:

I am in receipt of your letter under date of March 30th, asking as to whether or not the Playground Commission has authority to carry insurance on the automobiles used by its employees in the discharge of their official duties.

OPINION.

You are advised that under the provisions of Section 10 of Article XIV A of the Charter, the Playground Commissioners have the exclusive management and control of their funds, and as they are charged with the care and protection of all property used for Playground purposes, they have the right to carry insurance upon that property should they deem it necessary to do so for its protection.

I am of the opinion, however, that such insurance as might be carried upon these automobiles would be limited to property damage that might be suffered by the machine, that is, the Commission would have authority to carry insurance protecting their machines against loss by fire or theft, or against loss which their machines might suffer by collision, but that you would not be justified in carrying insurance which would provide for the indemnifying of the Commission or its employees against damage which your machines or employees might do to others, for the reason that as long as your machines are used in and about the business of the Commission, they are engaged in a governmental function, and no liability rests upon the City or upon the Commission for any damage that they may do. In all probability, your insurance carrier would not be liable under the policy of insurance until a judgment was recovered against the City for the damage, and as no judgment can be recovered against the City, the expenditure of a premium for this form of insurance would not be justified.

Very truly yours,

CITY ATTORNEY.

Playground Commission.

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(36)

36

April 5,1926.

SUBJECT: Appropriation of Surplus Moneys
From General Fund.

Gentlemen:-

I am in receipt of a letter from your Chairman to which is attached a copy of a resolution of the Board of Supervisors relative to the appropriation out of the General Fund of certain money to pay rental for property in which the District Attorney and other officials are to be housed, and in which letter the following questions are asked:

"1. After the annual budget for the current fiscal year has been adopted as provided in the Charter, can the Board of Supervisors appropriate and authorize the expenditure of additional sums 'from the General Fund' for purposes not mentioned in the budget?

2. Can the Board of Supervisors estimate any surplus revenue to accrue at the end of a fiscal year; (meaning revenue in excess of budget appropriations) and authorize the expenditure of the same prior to the end of the fiscal year?

3. To what extent should the opinion of former City Attorney, Franklin K. Lane, (Lane's Opinions, Page 373) be affirmed, modified or reversed?

4. Will your opinion on the foregoing invalidate the resolution pending in this Board, a copy of which is attached? "

OPINION.

QUESTION ONE:

The consideration of this question naturally carries with it a consideration of the purpose of the annual budget. Sec. 3, Chap.I, Art.III of the Charter provides how and when the annual budget shall be prepared. When this budget is prepared it serves a two-fold purpose, (a) - To secure an estimate of the amount that will be necessary for the conduct and management of the City

government for the ensuing year. (b) - As to how that amount shall be apportioned among the different departments of the municipality. The Charter does not look upon the budget as something positive, but rather as an estimate.

Sec. 1, Chap.I, Art.III, provides:

"On or before the first Monday of April in each year the heads of departments, offices, boards or commissions of the City and County shall send to the Supervisirs an estimate in writing, etc."

Sec.2:

"On or before the first Monday in May in each year the Auditor shall transmit to the Sup rvisors an estimate etc."

Sec.3:

"The Supervisors shall meet annually between the first Monday of May and the first Monday in June of each year, and by a vote of the majority of all the members thereof make a budget of the amounts estimated to be required etc."

Even after the items constituting the budget have all been passed by the Supervisors it is still looked upon only as an estimate -

Sec.4:
"After the final estimate is made in accordance herewith,it shall be signed by the Mayor etc."

It would therefore appear that if the Charter framers felt that when the annual appropriation had been allowed to any department by the budget, that it could not be augmented or diminished if the estimate should have proved incorrect they would have so stated.

The Supreme Court of the State of Connecticut in passing upon a similar matter has said:

"The provision of the Charter which calls for an annual classified appropriation by the council of amounts deemed necessary for the expenses of the various departments of the city government, and forbids any city or department officer or board to exceed such appropriations, is intended for the protection of the city against its officers, and does not prevent the city itself, through the council, from incurring additional expenditures

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"The provision of the Charter which calls for an annual classified appropriation by the council of amounts deemed necessary for the expenses of the various departments of the city government, and forbids any city or department officer or board to exceed such appropriations, is intended for the protection of the city against its officers, and does not prevent the city itself, through the council, from incurring additional expenditures

> for purposes not forseen when the annual appropriations were made."

See - Whitney et al. vs. New Haven,20 Atl.Rep.666.

The Supreme Court of our own State has also given expression to the same view in San Francisco v. Broderick,111 Cal.320. While this case arose prior to the adoption of the present Charter, the provisions of the Consolidation Act and our Charter as to what constituted the General Fund, that I believe it most important. The Court had under consideration the matter of an additional allowance to the Department of Elections. Under the Consolidation Act the Supervisors were required when making the levy of taxes, to apportion and divide the taxes to certain specific funds, "according to the estimate of said boards of the necessities of said funds. The Act described the General Fund as follows:

> "The general fund consists of moneys in the treasury not designated and set apart by law to a spscific use and the overplus of any special fund after the satisfaction of all demands upon it."

The Charter describes the General Fund as follows:

> "The General Fund shall consist of money received into the treasury and not specifically appropriated to any other fund."

In passing upon the propriety of making an additional allowance the Court said:

> "The estimate which the board of supervisors is directed to make of the necessities of the several funds, as the basis of the tax which they will levy, is not a conclusive determination of the amount that may be expended for these several necessities, and, although the failure to levy a tax which shall raise a sufficient amount of money for these needs will prevent the expenditures, yet, if the money has been collected and is in the treasury, applicable thereto, its expenditure or disbursement is not limited by the amount of the estimate. In the present case the board of supervisors were required to estimate the expenses that would be incurred at the general election for the year 1894, and in the exercise of their judgment they deemed it necessary to provide the sum of one hundred and fifty thousand dollars therefor. As the incurring of these expenses was not under their control, it would be competent for that body to determine the amount that should be expended,

> and their estimate would be at most only an approximate opinion of the amount of the expense, nor does the fact that their estimate was too low deprive the holders of claims for the excess above this estimate of the right to payment, so long as there is money in the treasury applicable thereto."

In Metropolitan Life Insurance Co. v. Deasy, 41 Cal.App. 674, the Court said:

> "The city charter, through its provisions as to the 'Surplus Fund' as the source from which judgments obtained against the municipality may be paid, leaves the matter of creating or replenishing such a fund entirely in the discretion of its various boards and offivials in charge of the replenishment and disbursement of the revennes of the municipality distributed among its other funds. If they do not choose to have left on hand a surplus which would flow into the surplus fund, the judgment creditor is remediless, inso far as the charter is concerned, to compel the creation or replenishment of the only fund from which his judgment might be satisfied."

Attention is directed to the language of the Court, "If they (the Supervisors) do not choose to have left on hand a surplus which would flow into the surplus fund, the judgment creditor is remediless." The surplus fund is made up from the General Fund after all other demands etc. are paid, and from this language it would appear that a discretion is vested in the Supervisors as to whether any balance in the General Fund should be used by them or be permitted to flow into the Surplus Fund.

Finally on this point, Sec.15, Chap. I, Art.III of the Charter provides:

> "The Supervisors shall authorize the disbursement of all public moneys, except as otherwise provided in this Charter."

The moneys in the General Fund are public moneys, and I can find no provision in the Charter which prevents the Board of Supervisors from disbursing them, provided they are not otherwise appropriated.

have not theretofore been appropriated to other purposes.

QUESTION NO.

Strictly speaking it may be said that the surplus i.e. (excess of income over budget appropriations) which may exist in any one year cannot be finally determined until the end of the fiscal year, for we may imagine a condition, where no money would be received for licenses, fines or fees, or even that all property owners could refuse to pay their taxes, but I am of the opinion that such a view would be an abnormal one and that the Board is justified in anticipating that unless some great emergency intervenes revenues from the remaining months of the fiscal year will be forthcoming on the same basis as during the past months, and that the Board with all of the facts before it may form a fairly correct estimate of the surplus which will exist in the future or may exist at the present time.

QUESTION NO.

My views as expressed in my answers to your questions Nos. 1 and 2, are an answer to this question.

QUESTION NO.

I believe that if the amount appropriated for the payment of rental for the premises mentioned in the resolution attached to your letter, for the remaining months of the fiscal year is a legal appropriation, provided the amount is at the present time in the General Fund, un-appropriated.

Respectfully,

City Attorney.

BOARD OF [illegible].

(37)

37

Apr. 7th, 1926.

The Playground Commission,
City Hall,
San Francisco, Cal.

Ladies and Gentlemen:

A letter dated March 30th, 1926, and signed by Philomena Hagan, concerning Miss Hagan's salary as Secretary to your Commission, was presented to me with the request that I advise you if the demand for the March salary of Miss Hagan in the sum of $300.00 should be paid.

If the statement contained in Miss Hagan's letter concerning the calling of the special meeting held on January 20th, 1926, is correct, and that there was not proper notification given to all the members of your Commission, and the meeting was conducted in private, then any action taken by you at that meeting is illegal. Likewise, action taken at the meeting conducted February 26th, 1926, would be illegal if the members of the Commission were not notified as hereafter stated, and if held in private.

To properly call a special meeting of your Commission, it is necessary that Section 7 of the rules of the Playground Commission be observed. Section 7 reads as follows:

> "The President, or four members may call a special meeting of the Commission; but no meeting of the Commission shall be called on shorter notice than twenty-four hours, nor without written notices sent to each member by the Secretary, specifying the objects of the meeting; and no business shall be transacted thereat, except that for which the meeting shall have been called."

Your minutes will disclose whether written notices were actually sent to each member of the Commission, and that the notices explained the objects of the meeting.

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In the case of City of Orange v. Clement, 41 Cal.App.497, the Court held:

> "A special meeting of the board of trustees of a city of the sixth class and all proceedings thereof are void where written notice of such meeting is not given, and one member of the board is absent."

Your attention is also directed to Section 1-a of Art. XVI of the Charter of the City and County of San Francisco, which reads as follows:

> "All meetings, regular or special, of every board or commission acting pursuant to this Charter, any ordinance, or any law of the State, for the transaction of any business of such board or commission, shall be open to the public, excepting special meetings held by the Civil Service Commission for the purpose of approving payrools and considering and adopting examination questions, and in the event of there being no date fixed by law, or ordinance, for the holding of any such meeting, public notice thereof shall be made."

I am therefore of the opinion, unless written notices were sent to all members of the Commission in accordance with Section 7 of your rules and regulations, and if any of your meetings, either regular or special, were conducted privately, actions taken by you at all of such meetings are illegal. If Miss Hagan was dismissed by you at any of those meetings so illegally called, she remains as Secretary to your Commission, and as such, if she reported for duty as stated in her letter, she is entitled to her salary of $300.00.

There is returned herewith the letter from Miss Hagan left with me by Commissioner Mills.

Respectfully,

City Attorney

DRH/MM

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38

Apr. 9th, 1926.

SUBJECT: Declaring Portions of Bay Street a Boulevard.

Dear Sirs:

I am in receipt of your letter under date of March 31st, in which you ask to be advised as to whether or not the City has authority to declare Bay Street a boulevard.

OPINION.

Your attention is directed to Section 25, Chapter II, Article II, of the Charter, which chapter defines the powers of the Board of Supervisors. The provision is as follows:

> "To set apart as a boulevard or boulevards any street or streets, or portions of a street or streets, over which there is no existing franchise for any street railroad."

In view of this provision of the Charter, the Board of Supervisors has authority to set apart such portions of Bay Street as a boulevard should they desire to do so, provided of course, that there is no valid franchise for a street railroad over the portions boulevarded.

The fact that portions of the street border on a military reservation is no valid objection to it being set apart as a boulevard.

Respectfully yours,

Traffic Committee of the
Board of Supervisors.

CITY ATTORNEY.

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39

April 10,1926. 39

SUBJECT: Residence of
School Teachers.

Dear Sir:-

I am in receipt of your letter of February 25,1926, together with a letter under date of February 20,1926, from the Northern Federation of Civic Organizations, requesting an opinion as follows:

"I am enclosing herewith copy of a communication from the Northern Federation of Civic Organizations, by Frank Fischer, Secretary, in re a protest he filed with me some months ago, which was referred to the then City Attorney, Mr. Lull, for an opinion. I am enclosing herewith a copy of the opinion of Mr. Lull to which Mr. Fischer refers in his communication, and I will be pleased to have you advise me, after reading the communication from Mr. Fischer, if you agree with the opinion of former City Attorney Lull. I would also be pleased to have you advise me whether, in your opinion, the fact that the teachers now receive a pension from the City Employees' Retirement System has changed their status as State employees."

"At the last regular meeting of this Federation, your letter of Dec.29, transmitting the opinion of former City Attorney Lull, on the question of the legality of the appointment of non-resident school-teachers was considered; and a resolution was adopted, requesting you to submit the matter to City Attorney O'Toole for review.

In this connection, your attention is called to the title of the Article of the Charter, namely Article XVII, under which teachers at present are drawing pensions, in which title they are referred to as "City Employees". Section 2 of the same Article, as you will note, speaks of a "general retirement system for all emplpyees of the City and County". Section 8 recognizes the teachers as City and County employees, allowing pensions only in proportion to that fraction of their compensation that comes from City and County funds. Furthermore, your attention is directed to the fact that the teachers have participated in the recent election of a member of the board of administration of the City Employees' Retirement System; and that such participation in itself implies that they themselves concede their status as city employees."

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OPINION.

This matter was fully discussed in an opinion rendered by former City Attorney, Percy V. Long, to the Board of Education July 23,1912. (Long's Opinions 1912-1 6, p. 20). It was also discussed in an opinion rendered by former City Attorney, George Lull, to the Auditor on December 9,1925.

I am of the opinion that Section 8, Art. XVII of the Charter of the City and County of San Francisco, dealing with the establishment of the retirement system for teachers in the San Francisco School Department does not in any wise change or alter the previous opinions of former City Attorney Long and former City Attorney Lull. The headnote or title of a Charter provision is no part of the Charter itself. It will be noted that Section 8 mentions teachers in the San Francisco School Department but does not state or indicate whether they are classified as municipal employees or state employees. The mere fact that they have participated in a recent election of a member of the board of administration of the City Employees' Retirement System would not in any way change the effect of the Charter provisions, for the reason that an employee cannot change the law or the provisions of the Charter by his own acts.

Respectfully,

City Attorney.

THE AUDITOR.

April 12th, 1926.

SUBJECT: Exemption of Officers from Liability.
Negligent Acts of Employees.
Duty of City Attorney in Defending Actions.

Sirs:

I am in receipt of your letter of March 31st, 1926, as follows:

"The Board of Public Works respectfully requests your advice upon the specified questions hereinafter submitted, which have incidentally arisen in the administrative conduct of some of the governmental activities of the department of public works committed by charter provisions to its charge and control.

In the conduct of such activities, particularly as it applies to the reconstruction and repairs of public streets and sewers, and the sweeping and sprinkling of public streets, the Board of Public Works employs in its service numerous auto-trucks and other vehicles, the same being owned by the city and county and operated by municipal employees appointed by the said board. The Board of Public Works also, under regulations prescribed by Ordinance No. 5923, new series, of the Board of Supervisors, approved June 28, 1923, has engaged in the construction and repairing of private side sewers, the opening and the closing of the trenches therefor, the laying of the necessary sewer pipes therein, the pavement surfacing thereof, and all other work in connection therewith, being performed entirely by employees of the said board.

Recently several claims for damages have been filed in the office of the Board of Public Works alleged to have been sustained by persons operating automobiles on and along the public streets, who claim, in some of the instances, that their automobiles have been damaged in consequence of the negligent acts of chauffeurs or drivers employed by the Board of Public Works to operate municipally owned auto-trucks or other vehicles utilized in its departmental activities, and in other instances damages are claimed for injuries to their automobiles occasioned by running during night hours into or over depressions in the public streets created by reason of declared incomplete filling of sidesewer trenches, and which trenches they assert were

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without adequate safeguards or warning signals.

The disposition of these several claims has been held in abeyance by the Board of Public Works pending your advice upon the questions hereinafter propounded involving attaching liability therefor.

The conduct of the departmental operations, responsible for creating the cause for the damages claimed to have sustained, may be considered as incidental and necessary to the performance of purely governmental functions, and being so there is no liability upon the party of the city and county for damages occasioned in the course of such conduct.

Chafor v. City of Long Beach, 174 Cal.478.
Bertiz v. City of Los Angeles, 48 Cal.App.Dec.427, Hearing in Supreme Court denied December 28,1925.
Harter v. Barkley, 158 Cal. 742, as to sidesewer construction.

The questions upon which your advice is requested are:

First. Does the exemption from liability for damages sustained as hereinbefore indicated also apply to the administrative board having charge, superintendence and control of the departmental activities mentioned, such activities necessarily involving governmental functions?

Second. Does the provision contained in Section 6, Article XV, of the charter, declaring that: "Every officer shall be liable on his official bond for the acts and omissions of his deputies, assistants, clerks, and employees, appointed by him, and of any and each of them," - imply that the administrative board referred to in the preceding question, may be subject to official liability for the omissions or negligent acts of its employees causing damages of the nature hereinbefore referred to in the course of their employment in the performance of the governmental functions specified?

Third. In case of an action at law instituted against such administrative board for the recovery of damages sustained by any person in consequence of some act of its employee engaged in the performance of a governmental function, would it be within the province of the City Attorney's official duty to undertake the defense of such board in court?"

OPINION.

1. Section 5 of Article I of the Charter of the City and County of San Francisco provides that administrative boards of officers shall not be liable for damage sustained by reason of the defective condition of any sidewalks, streets, etc., unless through the official negligence of the board, a defect remains unremedied or unprotected, and in consequence thereof damage or loss to personal property is sustained or suffered, provided that the board has been properly notified in writing, and provided further that the board has funds sufficient for repairing or remedying the defect.

In the event that a truck driver should be negligent while doing work for the City, he alone would be liable for damages and not his superiors, unless, of course, there can be shown some direct connection of the superior with the accident.

2. Section 6 of Article XV of the Charter does not imply that an administrative board of the City and County of San Francisco may be subject to official liability for the negligent acts of its employees causing damages as the result of automobile collisions or defective sidewalks or streets. This section apparently deals with the duties imposed upon the employees, and does not deal with acts of negligence on their part.

3. It would not be within the province of the City Attorney's official duties to undertake the defense of an administrative board in court in the event that such board was sued for damages in consequence of some neglignet act of an employee of the board engaged in the performance of a governmental function, for the reason that the board would be the defendant, and not the City and County. Section 2 of Chapter II of the Charter of the City and County of San Francisco provides for the duties of the City Attorney, but does not provide that he shall defend suits for any boards. However, it has been the custom of the City Attorney of the City and County of San Francisco in the past to handle any such cases which might arise, and will be the policy of this incumbent in the future.

Respectfully,

City Attorney.

Secretary of Board of Public Works.

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41

April 12,1926.

SUBJECT: Use of Passageway Valparaiso Street by Pedestrians.

Members:

I am in receipt of your letter under date of March 31,1926, containing a copy of a resolution, requesting an opinion, as follows:

"I beg to transmit to you the following copy of a resolution which was adopted by the Board of Education at its meeting held March 23,1926, and in which your opinion is respectfully requested on the subject therein set forth:

'INASMUCH as the Property Owners Association of North Beach has called attention to the fact that at the time the School Department acquired additional land for the Hancock School (Filbert and Taylor Streets) a portion of the easterly half of Valparaiso Street, described as follows:

COMMENCING at a point on the westerly line of Taylor Street distant thereon 127 feet 6 inches northerly from the northerly line of Filbert Street; running thence at right angles westerly 90 feet to the easterly line of Roach Street; thence southerly along the easterly line of Roach Street 5 feet (more or less); thence at right angles westerly 20 feet; thence at right angles southerly 5 feet; thence at right angles and along the northerly line of the present school building 110 feet to the westerly line of Taylor Street and the point of commencement.

was taken over by said Department and a small passageway, only, left for the use of pedestrians (residents of Valparaiso St.),a promise being made at the time that the passageway would be left open and steps put in; and

WHEREAS, said promise has not been fulfilled and that a fence has been built across the western end of such passageway and no steps built;

Therefore be it

RESOLVED: That the City Attorney be and he is hereby requested to render an opinion on the following point:

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'Assuming that the land belongs to the City for school purposes, would the Board of Education be liable for damages if the aforesaid passageway be made usable for pedestrians (by removing the fence and constructing steps or ramp) should an accident occur therein!"

OPINION.

Section 5, Article I of the Charter of the City and County of San Francisco provides that no recourse shall be had against any board of officers of the City and County of San Francisco for damage or loss, to person or property, suffered or sustained by reason of the defective condition of any sidewalk, lane, alley, etc. unless through the official negligence of the Board a defect remains unremedied or unprotected and in consequence thereof damage to person or property is sustained or suffered, and in that event the board shall be liable to the party injured for the damage sustained. However, the board must be first notified in writing of the fact of the existence of a defect.

The mere happening of an accident does not presume negligence on the part of a board of officers such as the Board of Education. If there were defects in the passageway which could have been remedied, and proper notice was given, then the Board would be liable for damages, but if the passageway is opened and is so arranged that there are no defects the Board would not be liable.

Respectfully,

City Attorney.

BOARD OF EDUCATION.

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42

April 13,1926.

SUBJECT: Payment of Money Due Upon Bond Coupons which have been Lost.

Dear Sir:-

You have referred to this office a letter containing an inquiry as to whether you would be justified in paying interest money due upon water bonds represented by coupons which have been lost or stolen upon receipt by you of a surety bond covering the amount of these payments.

OPINION.

The bonds of which these coupons are a part, are negotiable and hence the coupons themselves are equally negotiable.

Lampton vs. Edwards, 54 So.245;
Hibbs vs. Brown, 82 N.E. 1008.

The coupons being negotiable are transferrable and good and redeemable in the hands of a bona fide purchaser for value. Even though such coupons may have been lost by or stolen from the owner, should they be presented by one who purchased these bonds before maturity and for value, without notice or knowledge that they had been so lost or stolen, such coupons have to be redeemed by you.

Greene vs. Minzenscheimer,110 N.Y.S.492.

These coupons would not outlaw until at least four years after the expiration date of the bonds of which they were a part and it is questionable whether they would outlaw at that time. Therefore any surety bonds taken for indemnification would of necessity have to extend for a period of time sufficient for these bonds or coupons to outlaw and,as that time is wholly indefinite and extends for at least many years to come,you can readily understand that the City would be involved in a risk in accepting surety bonds of any company because of a possibility that such company might not be in existence at the time the bonds would fall due.

Taking all these things into consideration I am of the opinion that it would be illegal for you to pay the amount represented by these lost coupons and take as security therefor a surety company bond for indemnif ication.

Respectfully,

City Attorney.

TREASURER.

42

April 19,1926.

Gentlemen:-

Receipt is acknowledged of your letter dated the 13th inst., enclosing a letter of April 12th from Benjamin M. Gunn & Co.

You have requested me to express an opinion on the following subject:

> "The Board of Supervisors desires to know if the agreement or contract to purchase such as Mr. Gunn proposes can be legally considered and entered into by the Board of Supervisors."

OPINION.

Under the authority of the matter of the controversy of the City and County of San Francisco and Thomas F. Boyle, 69 Cal.Dec.183, it was held that the City has the power to lease property but that it has not the power to enter into an agreement for the conditional purchase of real property.

Mr. Gunn's proposal recites as follows:

> "For the amount of rent which it seems you are willing to pay and in the same installments as you would pay during such ten years lease, I now offer you over three times the space, in a fine brick and steel frame building, directly opposite the Hall of Justice, and in addition, without any additional extra payments will in consideration of such payments for ten years, give you clear and unincumbered title to the property. * * * * * * *
>
> The direct result of accepting this offer will be that instead of having 120 valueless rent receipts at the end of the ten year period, you will have a fine building and lot for nothing, with permanently free rent forever thereafter. * * * * * * * *"

From the language quoted from the letter of Gunn & Co. and other statements in their communication as well as an absence of the amount of the rent to be charged a Court may construe it as not an offer to lease that is being made but that it is an offer to sell. The letter is susceptible of such an interpretation by the Court and if the Court concluded that it is a conditional agreement to purchase real property, it would also hold it was beyond your powers to make such an agreement.

There is nothing to inhibit your entering into a lease coupled with an option to purchase but the option to purchase must be in such form that no liability, present or future, will attach to the City and County in the event you do not exercise the option.

It is my opinion that, as Benj. M. Gunn & Co. have made an offer which, despite the fact that it may be called a lease, is susceptible of being construed by the Court as an agreement to purchase real property, it would be hazardous to accept the proposal as outlined in the letter of April 12,1926.

Respectfully,

City Attorney.

BOARD OF SUPERVISORS.

January 12th, 1926.

SUBJECT: Taxation of Shares of Stock
of Foreign Corporation.

Dear Sir:

Under date of October 2nd, 1925, you wrote my predecessor in office, George Lull, Esq., asking an opinion as to the taxability of shares of stock of a Delaware corporation under the following circumstances.

FACTS.

This Delaware corporation is a holding company. Its shares are owned by residents of California, and represent ownership of shares of stock of a California corporation, all of whose property is situate within this State.

OPINION.

The shares of stock of the California corporation are not taxable because the property they represent is taxed in this State and taxation of that stock would be double taxation.

The stock of the Delaware corporation indirectly represents this same property, but those shares of stock are such personal property as was contemplated by the people of this State when on November 4th, 1924, there was passed an amendment to Article 13 of our State Constitution, which in substance is to the effect that such shares of stock, solvent credits, securities, etc., should be taxed as personal property, and that this tax should be upon the basis of seven per cent of its value when such property had been duly declared to the proper assessor.

The taxation of the shares of stock of the Delaware corporation is taxation of a separate piece of personal property from that of the shares of stock of the California corporation and is not double taxation such as is prohibited by our State Constitution.

Respectfully yours,

CITY ATTORNEY.

Assessor.

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45

Apr. 16th, 1926.

Dear Sirs:

I have before me two warrants drawn on the Dubocc Tunnel Fund, one for $350.00 in favor of Mr. Theodore J. Savage for legal services rendered the Tax Collector and the City Engineer in the matter of the segregation of assessments relative to Dubocc Tunnel, and one for $2500.00 in favor of General Fund to cover refund of that amount paid to Mr. Savage by order of Board of Supervisors for legal services rendered in re Dubocc Tunnel.

The first warrant bears the approval of Mr. George Lull, my predecessor in office, the services having been rendered during his incumbency as City Attorney. You ask as to the propriety of approving the payment of Mr. Savage's warrant, and the transferring of the amount of the second warrant from the Dubocc Tunnel Fund to General Fund.

As to Mr. Savage's services to the City, while I believe they were not authorized by any resolution of the Board of Supervisors, I have been advised that the services were rendered for the purpose of straightening out some very serious difficulties which had arisen in regard to levying the assessment on the properties covered by the Dubocc Tunnel Assessment, and that the work was done at the suggestion of Mr. Lull's office, as well as with the approval of the Tax Collector. I have discussed with Mr. Savage the nature of the work and the amount of time which it consumed, and believe the charge to be reasonable, and therefore concur in Mr. Lull's approval of the demand.

As to drawing of the amount from Dubocc Tunnel Fund and crediting same to General Fund, I believe such a course to be proper, as the charge is for the benefit of the tunnel.

I herewith return the warrants mentioned.

Sincerely yours,

CITY ATTORNEY.

To the Finance Committee
of the Board of Supervisors.

45

April 13,1926.

SUBJECT: Interpretation of Orphan Aid Act.

Dear Sir:-

I am in receipt of your request for an opinion as follows:

"The following will, I trust, clearly set forth the history of a typical case in which we believe that the State should cooperate with the City and County in the support of the person involved, data being presented to the end thatnyou may recommend what action, under the statutes, you believe we should now take to have the State accord said cooperation.

May I, first, direct your attention to article 4, section 22 of the Constitution of the State of California concerning the support of minor orphan, half-orphan and abandoned children and section 2283 of the Political Code of this State concerning the amount of money that the State is to contribute to such child, and to suggest that, possibly, you will find in sections 2286, 2287, 2288 and 2289 data that will prove of interest to you in forming your opinion in this matter.

On or about the 12th day of November,1925, I submitted to Mr. Boyle data concerning one Robert Ehlers, born in the State of California, on the 8th day of June,1917, and by order of the Superior Court, City and County of San Francisco committed to the Sonoma State Home for the Feebleminded on the 9th day of January,1925.

The father of said person, after having resided in the State of California approximately 38 years died at Modesto, Stanislaus County on the 15th day of November,1918. The mother of this child, a native of this State, is now in the Sonoma State Home for the Feebleminded by order of the Superior Court of Stanislaus County, this State where are also placed by order of Stanislaus County her two children, Eugene and Edna. There remains but one child, a girl of 25 years, employed as stenographer in the City and County of San Francisco at a wage just sufficient to permit her to support herself.

You will note, then, that the boy, Robert, is under the age of 16; is a half-orphan and there is no one to whom we may turn for support other than the county and state.

San Francisco County is now contributing the sum of $20 per month to the State Hospital for the support of this lad and has so contributed since the date of placement.

Following my taking over the responsibility of supervision of the County of the Feebleminded at the State Hospital I discovered not only this but many other similar cases in which I believe the state should bear financial responsibility as contemplated under the Constitution and I have filed with out County Auditor memoranda of all such cases, he submitting as a test case to the State in proper form, application for orphan aid in behalf of said Robert Ehlers, Mr. Boyle now advising me that the State has refused to grant orphan aid in behalf of the lad, saying that he is not eligible, they, however, not giving us their reason for ineligibility except that they are acting on the advice of the Attorney General.

The principle involved in this matter was presented to your predecessor, Mr. Lull, some months ago, he advising that it was his opinion that the county was entitled to collect from the state the sum of $10 per month until the person involved reached the age of 16 years. Mr. Boyle also had a similar opinion from his attorney, Edward Moran. May I suggest that your files be referred to for Mr. Lull's memoranda I having received no written opinion from him, and that Mr. Boyle be seen for the written opinion long-time ago secured by him from Mr. Moran.

If you find that San Francisco County appears to be entitled to state aid in this and similar cases, will you kindly advise what steps should now be taken to force the State to grant to us that which appears to be our right.

In closing, to say that such cases have been submitted to Mr. Boyle as will make an income at this time of approximately $6000 a year if we win out."

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OPINION.

Replying to your recent inquiry, it is my opinion that a county is not entitled to payment of a "claim upon the state orphan aid appropriation for reimbursement on children placed in such institution as the Sonoma State Home.

My attention is called to sections 2283 and 2289 inclusive of the Political Code. I do not find therein any authority for the ayment of such a claim. The intention of the people to grant aid to a county, expressed in section 22 of Article IV of the State Constitution, is that such aid shall be given when the county is providing for the person concerning whom aid is sought from the state by the county.

The Political Code sections to which I have referred likewise interpret the purpose of the constitutional provision and are confined, so far as their reimbursement features are concerned, to a case where the county is maintaining the child.

In the recent case of County of Los Angeles vs. California, 64 Cal.App. 290, the Court stated on page 287:

> "it was also the duty of Los Angeles County to provide for the maintenance of its own wards and not to shift the burden upon the state or upon other counties of the state who, following the statute, had made provision for the support and maintenance of their wards."

And on page 299:

> "said the interpretation which we think should be given by these acts, that the several counties should bear the burden of maintaining their own wards sent to the Preston School of Industry, not exceeding the sum of $20 per month * * * * * *."

Under these circumstances, the City and County of San Francisco has no claim.

Respectfully,

City Attorney.

PROBATION OFFICER.

(47)

April 21,1926. 47

SUBJECT: Children Brought Into the State of California in Violation of the Law.

Gentlemen:-

I am in receipt of your letter of April 9,1926, as follows:

"In that the State of California through its Department of Finance has refused to grant state aid to certain children named Coffaro who, as half-orphans, are now being supported by the City and County of San Francisco and for whom state aid in my judgment should be granted, I am now submitting all of the essential facts as I see them to the end that you may advise me whether or no you believe these children are, under the laws, entitled to state aid.

In this connection may I suggest that you see the Political Code, Sec.2289, as amended, statutes of 1923,page 148 with special reference to the last paragraph of said section as it applies to those who are brought into or kept within this state by any person in violation of any law of the United States or of this state.

The three children involved are William Coffaro, born in Chicago,Ill. on March 14,1912; Joe Coffaro, born in Italy in 1913 and Frank Coffaro, born in Italy in 1919.

The father of these children was Domenico Coffaro, born in Italy and dying in Chicago,Ill. February 28,1922, he having been murdered.

The mother of these children is Gracia Scillacci Coffaro, born in Italy and now living and a resident of San Francisco since May 4,1922.

There is now residing in or in the neighborhood of the City and County of San Francisco Frank,Sam, John and Joseph Scillacci, brothers of the mother of these children. When it was discovered by them that their sister was in need due to the death of her husband they advanced funds to their sister which permitted her and her three children to come to this community, they arriving here as heretofore stated in May 4,1922.

For two years next following their arrival these brothers supported their sister and children, having been advised by this office that neither state nor county aid could be granted until the mother had had at least two years residence in our community.

Two of the three men involved are married and have families of their own to support and none of them is a man of means.

Eventually, in April,1925, these children were brought to the attention of the court, the matter being continued from time to time until January 28,1926, when the children were recognized by this court as entitled to county aid, the Little Children's Aid Society, this City, being by court order authorized to draw $17.50 per month from the City and County of San Francisco to meet the need of the three children herein named, with the uncles John and Joseph Scillacci directed to pay $8.50 per month each, with Frank Scillacci ordered to pay $7.50 per month and Sam Scillacci $5.00 per month toward the support of these children, these orders being still in force and effect.

The several uncles involved, after having had legal advice, refused to comply with the court's order and after I had consulted with the District Attorney I came to the conclusion that these men might not be held responsible for the support of these children although it may be that, presently, we can bring action against them for having violated the law of this state in bringing dependent persons into the community, although, quite frankly, it occurs to me that this action might not lie because of the length of time which has elapsed since the arrival of the persons in the community.

Acting on reports submitted by me to the County Auditor he made demand against the state for reimbursement in the sum of $10 per month for each of these children on the ground that these half-orphans were now being supported by this community.

The State of California, through its agent, Mrs. Braden, has refused to order the aid requested on the ground that these children are in this community in violation of the law.

I will be grateful if you will advise me of your opinion in this and in case the data submitted is not adequate I will be glad to supply such further information as you desire."

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OPINION.

No one can now be prosecuted criminally for bringing into the State of California the three children mentioned in the foregoing request.

Section 801 of the Penal Code provides that any prosecution for a misdemeanor must be begun within one year from the date of the Commission of the offence.

Act.5814, Sec.3 provides:

> "Every person, firm or corporation, or the officers, agents, servants, or employees of any person, firm or corporation, bringing into or leaving within, or procuring the bringing into or the leaving within, or aiding in the bringing into or the leaving within, of any pauper or poor or indigent or incapacitated or incompetent person as hereinbefore mentioned, in any county or city and county in the State of California, wherein such person is not lawfully settled or not lawfully residing as herein defined, knowing him to be such pauper, poor, indigent, or incapacitated or incompetent person, shall be guilty of a misdemeanor."

From the foregoing it appears that the children were brought into the State of California illegally.

Sec. 2289, Part 4 of the Political Code provides:

> "That a child who has not resided in this state for a period of at least two years prior to the application for aid shall not be eligible to receive state aid unless such child is born in this state; provided, further, that no child born without the state who is brought into or kept within this state by any person in violation of any law of the United States or of this state shall be eligible to receive state aid, regardless of the length of time such child may have been within the state."

Reading the foregoing statutory provision dealing with the bringing of indigents into the State of California in conjunction with the Political Code section my opinion is that the children mentioned in the request are not eligible to receive state aid.

Respectfully,

PROBATION OFFICER. City Attorney

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April 26,1926.

SUBJECT: Liability for Cost of Extension of Retaining Wall at Fremont School.

Gentlemen:-

Under date of the 19th inst. you request information as upon whom should fall the cost of extending upward the retaining wall at the rear of the Fremont School yard, so that children at play therein may be protected from imminent dangers arising from a condition created by adjoining property owners in piling a quantity of earth and rubble against a wooden fence placed on top of the division wall by the School Department.

OPINION.

The only legal liability upon the City at the time of the excavation of the school site for construction purposes was that it afford to the adjoining land a lateral and subjacent support sufficient to maintain such land in its natural state. This obligation was satisfied by the City in its erection and maintenance of the retaining wall now in question. (Sec. 832 Civil Code).

Any piling of rubble or imposition of earth upon the natural surface of the property of the adjoining land, by the owner of such property to such an extent that a dangerous condition is caused as to proper enjoyment of the coterminous owner's property rights, is wrongful and the latter person is entitled to relief at Court. It is nothing more or less than the maintenance of a private nuisance.

Mayne Miller v. G.W.McClelland,173 N.W. 910;
Abrey v. Detroit 127 Mich,374;
Hutchinson v. Schimmelfeder,40 Pa.396;
McKnight v. Denny,198 Pa. 323.

I should suggest that you notify all the owners of the adjoining property who have violated your rights to remove the cause of danger within a reasonable time, and upon refusal so to do proper legal steps be taken in order to abate the nuisance.

You will appreciate that the condition can be cured by them either by grading their land so that it will not fall over the retaining wall as originally constructed, or by their extending the present wall so as to share up the artificial land level.

Respectfully,

BOARD OF EDUCATION. City Attorney.

48

Apr. 26th, 1926.

SUBJECT: Taxation of Railroad Bonds.

Dear Sir:

Your request for an opinion dated April 17th, 1926, with regard to whether the bonds of the Southern Pacific and Western Pacific Railroads are subject to taxation, was received by me in due course.

OPINION.

Neither Section 3627 nor 3617 of the Political Code, as amended March 20, 1925, have any bearing, for the reason that Section 3627 Political Code has no connection whatsoever with the subject, and for the further reason that Section 3617 of the Political Code has been properly declared to be unconstitutional as an attempt on the part of the legislature to usurp the powers of the constitution. In the absence of Section 4, Article XIII of the State Constitution which was repealed in 1910, Section 3617 Political Code, part 1, can be of no effect.

> "Touching this statute it need only be said that, if the constitution did not require the taxation of the bonds of railroad and other quasi public corporations, the amendment in question was wholly unnecessary; and if the constitution did require such bonds to be taxed, it was not in the power of the Legislature to exempt them."
>
> MACKAY vs. SAN FRANCISCO,
>
> 113 Cal. 392.

A reading of the decision of the same court in GERMANIA TRUST CO. vs. SAN FRANCISCO, 128 Cal. 589, at first blush might cause a different conclusion, but Sec. 4, Art. XIII, as it then read, has since been repealed.

Therefore, the only possible manner by which railroad bonds

such as the foregoing may become exempt from taxation is under and by virtue of Article XIII, Section 1 of the Constitution of the State of California, which states:

> "provided, that a mortgage, deed of trust, contract, or other obligation by which a debt is secured when land is pledged as security for the payment thereof, together with the money represented by such debt, shall not be considered property subject to taxation;"

This constitutional provision defines the term property; hence supersedes Sec. 3617, part One, of the Political Code which attempts to define property and to exempt the bonds of railroad or quasi public corporations.

It is my opinion that when a railroad bond is secured by property situated entirely within the State of California, and if the value of the land equals the value of all the bonds of a particular issue, the bonds would not be taxable. A tax on the bonds would be double taxation. Where, however, the value of the land is less than the value of all of the bonds, then the difference in value should be ascertained. The bonds are not taxable if there is sufficient land pledged as security for the payment thereof within the State, since the land itself would be taxed, but if there is not sufficient land and the amount of the bond issue exceeds the land pledged therefor within the State of California, then the taxable amount of the bonds is that percentage of the entire bond issue over and above the value of the land within this State.

GERMANIA TRUST CO. vs. SAN FRANCISCO, Supra.

ESTATE OF FAIR, 128 Cal. 607.

Respectfully yours,

CITY ATTORNEY.

Assessor.

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51

April 29th, 1926.

SUBJECT: In re Motion to Reconsider Ordinance on Final Passage, and Time for Reconsideration.

Dear Sir:

I have received from your office Resolution No. 25538 (New Series) adopted by the Board of Supervisors on April 19th, 1926, regarding which you ask the following questions:

(a). Was said resolution subject to a motion to reconsider on final passage.

(b). If so, was it mandatory on the Board to dispose of said motion to reconsider at its next regular meeting, immediately succeeding the one at which notice to reconsider was given.

OPINION.

(a). I find nothing in the Charter which prevents the reconsideration of any ordinance or resolution of the Board of Supervisors either on passage to print or on final passage. In fact, a motion to reconsider on passage to print, would accomplish only delay, for even without the motion the matter must be reheard on final passage. Rule No. 12 of the rules of order of the Board, provides for the reconsideration of any motion whether carried or lost, and I am of the opinion that this rule is sufficiently broad to cover a motion to finally pass.

(b). The above mentioned rule provides as follows: "The vote upon such motion to reconsider shall not be taken before the next regular meeting of the Board." As there is nothing in the rule compelling action on the motion at any particular meeting, the only mandate being that the motion shall not be acted upon until the next meeting, I am of the opinion that it is not compulsory on the Board to vote on the motion to reconsider at the meeting next succeeding the one at which notice to reconsider may have been given, and if the Board desired to continue the hearing of the motion, it had the power to do so, provided, of course, that there was no particular time limitation fixed for the passing of the particular ordinance or resolution.

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You are therefore advised that the resolution mentioned was subject to a motion to reconsider, and that the reconsideration at the second meeting after the notice was given was legal. I may add that the Journal of the Board of Supervisors shows that the motion to reconsider was on April 12th duly continued to April 19th.

I herewith return the resolution submitted.

Sincerely yours,

CITY ATTORNEY.

To His Honor The Mayor.

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April 29,1926.

Mr. John B. Badaracco,
Board of Supervisors,
City Hall.

Dear Sir:-

You requested me to advise you if the Market Street Railway Company could be compelled to keep in repair the portions of the streets occupied by it.

Section 498 of the Civil Code provides that in addition to the restrictions set forth in the franchise granted the Railway Company a strict compliance with conditions enumerated was imposed on the Company. Until 1921, the second condition set out under Section 498 read as follows:

> "Second. To plank, pave, or mecadamize the entire length of the street, used by their track, between the rails, and for two feet on each side thereof, and between the tracks, if there be more than one, and to keep the same constantly in repair, flush with the street, and with good crossings."

In 1921 the section quoted was repealed. However, an examination of the franchises granted the individuals and the companies, which were later transferred to the Market Street Railway have set forth in the franchise the language similar to the following:

> "The grantee operating under this franchise shall be required to pave the space between the rails and for two feet each side thereof, and between the tracks if there be more than one, upon the streets whereon said tracks are to be laid, and to keep the same in good condition and repair under the supervision and to the satisfaction of the Board of Public Works of the city and county."

The language last quoted has not been employed in all of the franchises that were granted as some of them state that the franchises are given under the terms provided for in the franchise and "upon such terms, conditions and restrictions as are now or may be hereafter imposed by the laws of the State of California, especially as prescribed in sections498,500, 502 and 503 of the Civil Code of this state."

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As the second section of Section 498 of the Civil Code was in effect at the time the franchises were granted the mere repealing of this section does not relieve the Market Street Railway of its liability to keep "constantly in repair" the street between the rails and for two feet on each side thereof.

In the event the Market Street Railway Company fails to make repairs after having been requested to do so, I believe you would be justified in ordering the work done and recovering from the Market Street Railway for the cost of the work.

Yours truly,

City Attorney

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May 3,1926. 53

SUBJECT: Liability of Park Commissioners for Articles Stolen from Checking Parcel Cabinets.

Gentlemen:-

I am in receipt of a letter under date of April 23, 1926, from the Secretary of your Board in which a request is made that an opinion be given as to the liability of your Board should articles be stolen from checking parcel cabinets which a firm in this City desires to install at various locations under your jurisdiction.

Attached to your secretary's letter is a copy of the agreement which has been submitted to you by the firm desiring to install the checking cabinets.

OPINION.

A very serious question presents itself, in my opinion if you enter into the proposed agreement for the installing of the checking cabinets. There is no doubt as to the liability of the firm installing the cabinets where loss, fire or theft can be shown as a result of their carelessness or negligence, and I am inclined to believe that your Board will be subjected to a like liability as a joint venture if you enter into the agreement. It is also questionable as to whether or not by entering into the agreement you do so by virtue of your governmental or proprietary authority.

If, however, you do decide to enter into the proposition as offered, I would advise you to demand a bond of a sufficient amount to protect you in case of any or all liabilities; the bond to run during the life of the agreement.

I return herewith to you the agreement which was attached to your secretary's letter.

Respectfully,

City Attorney.

BOARD OF PARK COMMISSIONERS.

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May 11,1926.

SUBJECT: EMPLOYEES OF BOARD
OF EDUCATION.

Members:-

Recently you transmitted to me an inquiry as to the right of the Board of Education to appoint secretaries to principals of high schools in our City and County and accompanied this communication with an opinion from Attorney General Webb denying the right of school trustees to appoint a secretary to the principals of high schools.

OPINION.

This matter was taken up by me with the Department of Education and I am informed that no secretaries are appointed to principals of any schools in the City and County of San Francisco but that stenographers are sometimes assigned to work in particular schools and I am further informed that this is done to expedite the carrying on of the duties of the Board of Education.

No direct warrant is contained either in the state law or the Charter for the appointment of secretaries to principals but Chap.III, Art.VII of our Charter gives the Board of Education the right "to employ such teachers and persons as may be necessary to carry into effect its powers and duties" and also specifies how and when such persons shall be paid and from what fund their salaries shall be drawn.

I am further informed that no money derived from the State is allocated toward the payment of such employees; that the State really does not pay one-half of the salaries of teachers alone and that the funds of the City and County are used exclusively in the payment of these stenographers as employees of the Board of Education and it is my opinion that the Board of Education has the right to designate what duties such stenographers shall perform and where they shall be stationed.

Respectfully,

City Attorney.

BOARD OF EDUCATION.

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May 12th, 1926.

SUBJECT: Liability for License Tax of

Persons Repairing Automobile Cylinders.

Dear Sir:

I am in receipt of yours of the 27th ultimo, requesting an interpretation of Section 75, Ordinance 5132 (New Series) as amended Oct. 1, 1925, particularly in reference to the problem outlined in the above mentioned letter, which you present as follows:

> "Now comes "Mr. A" who in his manufacturing plant does considerable reboring or regrinding of cylinders of used automobiles, when these cylinders are refusing to properly function. The cylinders are taken out of the auto by "Mr. B." and delivered to "Mr. A" to rebore or regrind. Mr. A contends that this is not repairing metal parts of automobiles and we insist that it is."

OPINION.

> "Section 75. Every person, firm or corporation engaged in the business of automobile repairing and limiting the service to any one of the following branches of repair work shall pay a license fee as follows:*********
>
> For installing, adjusting or repairing any of the metal parts of used automobiles or other vehicles (except fenders, radiators or windshields) twelve dollars and fifty cents per quarter."

The determination of the instant question depends upon whether or not the person, Mr. "A" is engaged in the business of automobile repairing, or is pursuing an engagement which incidentally applies to one of the enumerated branches of the automobile repairing departments, but whose chief line of endeavor is something far removed from the realm of the motor vehicle.

This doctrine was very clearly enunciated in the case of MERCED COUNTY v. HEIM & NOLAN, reported in volume 102 Cal. 159, where at page 164 the court says:

> "The right to demand a license tax as the condition of engaging in any business within the

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> county, must be expressly conferred upon the county, and the right to impose a tax upon a "business" will not authorize imposing a tax upon the individual acts connected with such business, nor can a license tax required for one business be demanded, for any act or business not specified in the ordinance providing for such taxes."

and at page 167, the court continues:

> "A single act does not constitute a business, and when a sale is but an incident in, or the final act of, another business, it cannot be said to be the business which is carried on and transacted."

From the language used in your communication, it indicates that Mr. "A" is engaged in a manufacturing business and as an incidence of such occupation he performs certain labor about cylinders of used automobiles. In other words, his direct engagement is something other than the repairing of metal parts of used automobiles.

To conclude the argument, I might suggest this thought: Does the fact that a glazier making repairs to a broken glass taken from the body of an inclosed car, make such person liable for the tax paid by persons repairing the bodies of used automobiles? To answer in the affirmative would extend the interpretation of tax ordinances to an unwarrantable degree, particularly in view of the law which provides that tax provisions must be strictly construed.

I, therefore, must answer your inquiry in the negative, and state that Mr. "A" is not taxable under the section outlined.

Respectfully submitted,

CITY ATTORNEY.

Tax Collector.

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May 14th, 1926.

SUBJECT: Accident Occurring on Line of

California Street Railroad.

Dear Sirs:

Your request for an opinion, dated May 11th, 1926, to be given to the Public Utilities Committee of the Board of Supervisors was received in due course, as follows:

Request.

"Your attention is called to the following Resolution adopted by the Board of Supervisors on motion of Supervisor Shannon:

WHEREAS, a very serious accident occurred on the California Street Railroad on Friday, May 7, 1926, resulting in the injury of a large number of persons, some seriously if not fatally, and causing much property damage; and

WHEREAS, The public interest requires that steps be taken to devise ways and means to prevent a recurrence of such an accident in the future; therefore be it

RESOLVED, That the City Attorney be requested to report to the Public Utilities Committee as soon as possible what public official or body would have jurisdiction and authority to make an investigation as to the cause of the accident, particularly with a view to determining if it was due to faulty equipment; and be it

FURTHER RESOLVED, That the City Attorney be requested to advise the committee if there is any provision or requirement of law for the inspection of the equipment of street railway companies and if not to recommend the proper procedure for providing for such inspection as a safeguard to the traveling public."

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OPINION.

Section 369a of the Penal Code provides:

"Any person, company, or corporation, operating cars on the streets of cities or towns, or on the county roads within the state, for the conveyance of passengers, propelled by means of wire ropes attached to stationary engines, or by electricity or compressed air, who runs, operates or uses any car or dummy, unless each car and dummy, while in use, is fitted with a brake capable of bringing such car to a stop within a reasonable distance, and a suitable fender, or appliance placed in front or attached to the trucks of such dummy or car, for the purpose of removing and clearing obstructions from the track, and preventing any obstacles, obstructions, or person on the track from getting under such dummy or car, and removing the same out of danger, and out of the way of such dummy or car, is guilty of a misdemeanor."

Under and by virtue of this Penal Code Section, a warrant may be sworn to by any person who desires to do so, charging any person, company or corporation which has not fitted its cars with a brake capable of bringing the cars to a stop within a reasonable distance. It is then the duty of the Police Department to make the necessary arrest, and the duty of the District Attorney to prosecute the case.

The franchise given by the City and County of San Francisco for the operation of the California Street Road, page 11, Book of Franchises, Section 6, provides in part:

"The cars shall be of the most approved pattern for the comfort and convenience of passengers, and shall be provided with sufficient brakes and other means of stopping the same when required."

A municipal franchise, while a privilege, is in effect nothing more than an agreement between a city and a person or corporation, giving the obtainer of the franchise the right to do a certain thing. If the franchise holder substantially violates the agreement, the franchise can be revoked. Several isolated violations would not, however, be sufficient to revoke a franchise.

The Police Department, therefore, could make an investigation of this accident to ascertain whether or not the Penal Code section aforesaid had been violated; or the Board of

Supervisors could themselves make an investigation to determine whether or not the terms of the franchise had been violated, and by so doing ascertain whether faulty equipment was being used.

There is at present no provision for the regular inspection of the equipment of street railway companies. The Board of Supervisors, by virtue of Article XI, Section 11, of the State Constitution, has the power to pass an ordinance in the City and County of San Francisco for the examination and inspection of the equipment of street railways. Since Article V, Section 9, part 1, of the said Charter provides that the Board of Public Works shall have charge, superintendence and control under such ordinances as may from time to time be adopted by the Supervisors concerning the matter of the use of all public highways, streets, avenues, lanes, alleys, places, courts, roads and boulevards, the Board of Supervisors might pass an ordinance providing for the regular inspection and examination by the Board of Public Works of the equipment of street cars operating within the confines of the city.

Respectfully yours,

CITY ATTORNEY.

Board of Supervisors.

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May 15th, 1926.

SUBJECT: In re Right to Cancel Order Postponing Hearing on Toll Bridge Franchise.

Dear Sirs:

I have before me the inquiry made by you at your meeting of May 10th, wherein you ask to be advised as to the right of the Board to set aside an order continuing the hearing of the applications for certain toll bridge franchises.

OPINION.

I have not before me the applications for these franchises, but presume that they are made pursuant to the provisions of Chapter IV of Title VI of the Political Code of California. Section 2870 of the Political Code provides:

> "Every applicant for authority to construct a toll bridge, must publish a notice in at least one newspaper in each county in which the bridge or any part of it is to be, or if no paper is published therein, in an adjoining county, once a week for six successive weeks, specifying the location, the length and breadth of the bridge, and the time at which the application hereinafter required will be made."

The Supreme Court of this State, in the case of GALVIN vs. BOARD OF SUPERVISORS OF CONTRA COSTA COUNTY, reported in Vol. 235 of Pac. Rep. at page 450, holds that the compliance with the provisions of this section is mandatory upon the Board.

Section 2871 of the Political Code provides that on the hearing any person may appear and be heard regarding the granting of the franchise, and that the Board may adjourn the hearing from time to time. The purpose of fixing a definite time and place for the hearing is for the purpose of advising all interested parties when the Board will hear the application, to the end that those interested may be present and present their arguments for or against the granting of the application.

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If the hearing is adjourned, those interested have the right to rely upon the order of adjournment as an indication that the matter will not be heard until the date fixed by the order adjourning the hearing, and should the order of adjournment be set aside, those interested could well complain that they had not the opportunity to be heard, and any order made by the Board on any date prior to the date of the adjourned hearing, would in my opinion invalidate the proceedings leading to the granting or denying of the franchise.

You are therefore advised that the Board having adjourned the hearing of the applications for the franchises to a definite date, it has not the power to set aside that order and hear said applications at an earlier date.

Respectfully yours,

CITY ATTORNEY.

Board of Supervisors.

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May 20th, 1926.

SUBJECT: In re Appointment and Salaries of

Battalion Chiefs in San Francisco Fire Department.

Dear Sirs:

I have before me your letter of inquiry under this date as follows:

"The Board of Supervisors have under consideration the Budget for the forthcoming year and wishes an immediate reply to the following queries:

Has the Board of Fire Commissioners the authority to appoint Battalion Chiefs in excess of the number allowed by amount of money appropriated in the Budget,

And if the number of Battalion Chiefs is increased during the fiscal year is the Board of Supervisors required to appropriate for the additional Chiefs in the succeeding Budget?

Also, is it required that Fire Commissioners before appointing additional Battalion Chiefs during the fiscal year obtain the approval of the Board of Supervisors? "

OPINION.

Section 1 of Chapter IV of Article IX of the Charter provides that the number of Battalion Chiefs shall be determined by the Board of Fire Commissioners. The language contained in this Section, in my opinion gives to the Board of Fire Commissioners the right to appoint such a number of Battalion Chiefs as they shall deem necessary for the proper functioning of the Department.

Section 1½ of Chapter VIII of the same Article fixes the salaries of all officers and members of the Department, including Battalion Chiefs.

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The Appellate Court of this State has held that a regularly appointed member of the Fire Department is an officer.

> "Where a public office is created and the compensation to be paid for services rendered by the incumbent thereof is to be fixed by public body, upon failure of such body to act therein, it may be compelled to do so by mandamus."

See McQUILLIN on Municipal Corporations, Section 516.

This text is borne out by the decisions of many of the Supreme Courts of the country, and practically means that where a public office is legally created, it is incumbent upon the salary-fixing body, or upon the body that appropriates the funds for salary, to provide for the payment of that salary. In the instant case, the salary of Battalion Chief is fixed by Charter, and the appointment having been legally made by the Board of Fire Commissioners as is provided in the Charter. I am of the opinion that those already appointed are officers in the Department, and that it is incumbent upon the Board to provide for their compensation.

As to the second inquiry made in your letter as to the necessity of the Board of Supervisors making provision for the salaries of officials in the Fire Department appointing during the past year, I will state that I think this question is sufficiently answered in my answer to your first inquiry.

As to the third inquiry in your letter, I am of the opinion that after your annual budget is made up and passed by the Board, that if the Board of Fire Commissioners attempted to make the appointment of additional officials in their Department, that they would have to serve without compensation, unless provision for their payment was made by your Board.

I do not wish to be understood by this opinion that it lies within the power of the Fire Commission to appoint members of the Department generally without limit without the Board of Supervisors making appropriation for the payment of their salaries, and this opinion is limited merely to the right of the Fire Commission to appoint Assistant and Battalion Chiefs, as Section 1, of Chapter IV, of Article IX gives to the Commission discretionary powers as to the appointment of Assistant and Battalion Chiefs, and not to any other official.

Very truly yours,

CITY ATTORNEY.

Board of Supervisors.

May 21st, 1926.

SUBJECT: In re Assessment of Stocks and Bonds.

Dear Sir:

I am in receipt of your letter in which you ask if it is permissible for you to assess stocks and bonds without specifically enumerating them and their character in the declaration to be made by the taxpayer, and to return to the taxpayer any list of said stocks or bonds after the same has been submitted to you for the purpose of making your assessment against the particular taxpayer.

OPINION.

Section 3629 of the Political Code provides as follows:

> "The Assessor must exact from each person a statement under oath setting forth specifically all real and personal property owned by such person or in his possession or under his control, at 12 o'clock M. on the first Monday in March."

This section of the Code then proceeds to set forth how the various kinds of property shall be set forth and enumerated in the statement.

Section 3650 of the Political Code provides for the making up of the assessment book with the appropriate headings, and for the listing of all property under the appropriate head. Subdivision 4 of this Section provides for the listing in the assessment book of personal property as follows:

> "All personal property, showing the number, kind, amount and quality; but a failure to enumerate in detail such personal property does not invalidate the assessment."

The Supreme Court of the State has construed both of the sections mentioned on several occasions. In the CITY AND COUNTY vs. FLOOD, 64 Cal. 504, the court held that where certain stocks were described merely as "mining stock", the description was sufficient and the assessment was valid. In the later case of CITY AND COUNTY vs. PENNY, 93 Cal. 465, the court held that where the assessment

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book described the personal property assessed as "personal property as per inventory on file in the Superior Court, Department No. 9", that the description of the personal property was sufficient.

The general doctrine is that where the designation of the assessed property is sufficient to afford the owner a means of identification, and does not positively mislead him, or is not calculated to mislead him, the assessment is sufficient.

Therefore, I am of the opinion that it would be legal for you to make up your assessment books without specifically enumerating the character of the property assessed, that is, it will be sufficient if you describe specific stocks or bonds merely as stocks and bonds; stock, as oil stock, bank stock, etc., as the case might be. I do not believe however, that you will be fulfilling the requirements of the statute if you assess this character of personal property merely as "personal property" .

You are further advised that after the taxpayer submits to you a list of his holdings, you are justified in returning said list to him and keeping no further record in your office of the specific articles of personal property contained in that list, other than a general description of the same as hereinbefore set forth.

Respectfully,

CITY ATTORNEY.

Assessor.

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May 24th, 1926.

SUBJECT: WIFE'S INTEREST IN DEATH BENEFITS UNDER RETIREMENT SYSTEM WHERE MONEY PAID INTO FUND WAS COMMUNITY PROPERTY AND WHERE THIRD PARTY IS NAMED AS BENEFICIARY.

Re: Bartholomew Webb Death Claim.

Gentlemen:

I am in receipt of a letter from the Secretary of your Board under date of May 17th, 1926, requesting an opinion in the matter of the Bartholomew Webb death claim. Briefly, it appears from the letter referred to, that the facts of the matter are as follows:

1. Bartholomew Webb, laborer, became a member of the Retirement System on October 5th, 1922.

2. In February, 1920, he was married to Mary Webb, now his widow.

3. On April 23, 1926, he died.

4. At the date of his death, his brother, Thomas Francis Webb stood of record as his designated beneficiary under the Retirement System. Prior to naming his brother as beneficiary, he had at previous times, named his daughter and wife as his beneficiary.

5. The money paid into the Retirement Fund was from wages earned by him as said laborer.

OPINION.

It is at once evident that the money paid into the Retirement Fund, deducted from his wages as provided by Ordinance No. 5561 (New Series), was earned by him subsequent to his marriage, and accordingly, consisted of community property.

See Sections 162, 163 and 164 of the Civil Code which defines what constitutes community property.

My opinion being that the money so paid was community operty, it follows that under the law of the State of California, e wife, upon the death of the husband, would be entitled to one-lf of the same.

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See Section 1401 of the Civil Code.

Furthermore, the proceeds of an insurance policy, or the proceeds to be received as in the instant case under the Retirement System, the premiums or the money on which have been paid out of community assets, are community property.

See UNION MUTUAL LIFE INS. CO. vs. BRODERICK,

70 Cal. Dec. page 121.

Where premiums of an insurance policy issued to the husband, are paid from community funds, the policy is a community asset, and the husband cannot, in view of Section 172 of the Civil Code, make a valid gift thereof by naming a third party as beneficiary, without the written consent of the wife, so as to deprive the wife of her community interest in the proceeds of the policy; and upon his death such community interest becomes vested in the wife and she is entitled to recover the same.

ELIZABETH B. BLETHEN vs. THE PACIFIC MUTUAL LIFE INS. CO., 47 Cal. App. Dec. 433; the same also in 71 Cal. 178; also NEW YORK LIFE INS. CO. vs. BANK OF ITALY, 60 Cal. App. 602.

You are accordingly advised that the widow, Mary Webb, is entitled to one-half of the amount of the death benefit to be paid in the matter of the death claim of Bartholomew Webb, deceased, and from the facts as presented, Thomas Francis Webb, the beneficiary named, is entitled to the balance or remaining half.

I am returning herewith the records and letters which accompanied the secretary's letter.

Respectfully,

CITY ATTORNEY.

Board of Administration
San Francisco City Employees'
Retirement System.

May 24th, 1926.

SUBJECT: In re Hiring of Teams and Automobiles Used in the Performance of the Functions of the Board of Public Works.

Dear Sirs:

I am in receipt of your letter under date of May 20th, reading as follows:

> "The Finance Committee desires your Opinion as to whether or not the Board of Supervisors has authority to take from the Board of Public Works the hiring of teams and autos used in the performance of the functions of the Board of Public Works and place the control of said hiring of teams and autos under the jurisdiction of the Board of Supervisors, as indicated in the proposed Budget for 1926-1927, as per items in said Budget Nos. 76, 78, 79, 79a, 79b, and 79c."

OPINION.

On two different occasions my predecessors in office have been called upon to answer inquiries similar to those contained in your letter. On April 17th, 1900, Hon. Franklin K. Lane had occasion to advise the Board of Fire Commissioners that the contract for the shoeing of the horses in the San Francisco Fire Department came within the category of supplies; and on July 17th, 1912, Hon. Percy V. Long had occasion to advise the Board of Supervisors on the same inquiry made in your letter, and he did in his opinion of that date advise the Board of Supervisors that the supplying of teams and buggies by the various departments of the City and County is a supply within the meaning of that word as used in Section 1, Chapter III, Article II of the Charter.

I have made an independent investigation of the matter, and am of the opinion that the question asked in your letter should be answered in the same manner that it was answered by my predecessors in office. I believe that the word "supplies" as used in Section 1, of Chapter III, Article II, of our Charter, should not be given a narrow meaning by limiting the word to include only

goods and wares, but that as far as possible it should be given the broader meaning to include all articles or appliances that are necessary for the proper functioning of the different departments of the government.

It has been held by the Supreme Court of this State that the supplying of teams or cartage to carry materials to a building in the course of construction may be properly allowed as a part of the costs of the materials upon the foreclosure of a mechanic's lien. In other words, our Supreme Court has practically held that the hauling of materials to a building is a part of the materials and therefore becomes a "supply" to the building.

I call your attention to the language used in the opinion of Hon. Franklin K. Lane above mentioned, as I believe it correctly states the intention of the charter framers:

> "It certainly was the intention of the charter makers that all things which could be supplied by contract should be so secured that the City might profit by competition and the consequent lower cost. Throughout the entire instrument this purpose is plain, and I would advise that you give a liberal interpretation to the words of the charter so as to meet as great a body of the departments' needs in this manner as is possible."

I direct your attention further to the fact that since the rendition of the opinion by Mr. Lane and Judge Long on this subject, the charter provisions have been changed by the creation of a Bureau of Supplies, and therefore, if teams and automobiles are to be considered as supplies to the different departments, the Bureau of Supplies will have charge of supplying the same, and it will be the duty of the Purchaser of Supplies to provide these in the same manner as other supplies are provided.

You are therefore advised that the matter of supplying teams and automobiles, as set forth and contained in Budget Items Nos. 76, 78, 79, 79a, 79b, and 79c, comes within the jurisdiction of the Bureau of Supplies.

Sincerely yours,

CITY ATTORNEY.

To the Finance Committee
of the Board of Supervisors.

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June 1,1926

Hon. Edward F. Bryant,
Tax Collector,
City and County of San Francisco,
City Hall,
San Francisco,Cal.

Dear Sir:-

Reference is made to your letter concerning Section 38, Ordinance 2186, "Tunnel Procedure Ordinance", wherein you ask for an opinion concerning the following:

> "When an agreement has been filed in this office to pay a certain assessment in installments and the installation is paid and subsequently an application for a segregation of the same subdivision is tendered to this office, is it advisable and legal for me to accept said application, cancel the original agreement, make the segregations on the Assessment List, and issue agreements to the applicants.
> The original agreement is recorded, therefore if same need be cancelled what procedure is necessary."

Careful study has been made of the section of the ordinance referred to in your communication, with a view, if proper, of advising you that a segregation of assessments levied for the Duboce Tunnel may be made in accordance with the present property owners. I regret to inform you that it is my opinion that the language employed in the section "before the sale of said property for delinquency" is ambiguous, as the time described may apply to either the subdivision for which segregation is sought, or to all of the property included in the assessment district.

Another reason as to why you may not at this time alter the assessments as recorded in your office is that the property owners who availed themselves of paying the assessment over a period of ten years in accordance with the terms of the Tunnel Procedure Ordinance, entered into an agreement to pay the assessment and the interest provided for, which agreement was duly acknowledged and recorded. The Tunnel Procedure Ordinance fails to provide a means by which this agreement may be altered or set aside.

As the work being done is by virtue of the Tunnel Procedure Ordinance, which in turn is authorized by Chapter VIII, Article VI of the Charter of the City and County of San Francisco, and it is solely by the authority of this ordinance than an assessment may be levied and the work done, the ordinance must be strictly construed and nothing read into the ordinance that is not in fact set out therein in unambiguous language and terms.

You are therefore advised that you may not properly segregate the assessments under the terms of the existing Tunnel Procedure Ordinance.

Yours very truly

JOHN J. O'TOOLE, City Attorney

By

_____
Deputy City Attorney.

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June 2nd,1926.

SUBJECT: IN RE PROTEST FILED AGAINST AWARD OF CONTRACT FOR MUNICIPAL BUSES TO BE OPERATED ON THE EMBARCADERO.

Dear Sirs:

I have before me your letter relative to the protest filed with the Board of Public Works by the Yellow Manufacturing Sales Corporation against the award of a contract for buses to Mack International Motor Truck Corporation and to Fageol Motors Co. With your letter was forwarded to me a copy of the protest.

OPINION.

As to whether or not the award is in compliance with the law depends entirely as to whether or not the bid, as well as the award of the contract, complies with the specifications for the buses as prepared by the Board of Public Works. It would appear from the protest that the award of this contract was made under the alternative proposal contained in the specifications. I quote you the paragraph of the alternative proposal contained in the specifications:

> "Alternative proposals will be received and considered for furnishing and delivering buses under specifications differing from these preferred specifications in any of the above particulars provided they are capable of satisfactorily rendering the required service, and further provided that sufficient data are submitted to enable the City Engineer to estimate the relative ultimate operating cost of said buses to his satisfaction; such data must be either in the form of guarantees or certified records of performance under similar conditions of service."

While it is not definitely provided in said alternative proposal that any specifications contained in any bids made under said proposal should be approved by the City Engineer, it is definitely stated in said proposal that a sufficient amount of data should be submitted with any bid made under the alternative proposal to enable the City Engineer to estimate the relative

ultimate operating cost of said buses to his satisfaction.

This provision in the specifications is in conformity with the provisions of Sec. 8, Chapter I, of Article VI of the Charter, which section gives to the Board of Public Works control of the construction, maintenance and operation of all public utilities owned, controlled or operated by the City. Under the authority of this section the Board of Public Works may contract for materials or equipment to be furnished, wherever such materials or equipment are certified by the City Engineer to be necessary in connection with the construction, maintenance or operation of the utility in question.

In view of the language contained in the alternative proposal, and the language used in the charter, I am of the opinion that at least the City Engineer should have certified to the Board of Public Works, either that the particular bus was necessary to the operation of the contemplated utility, or that the data required in the alternative proposal had been submitted to him. I can find nothing in the records to show that the City Engineer has certified to the necessity of the particular bus, or that the data mentioned has been supplied. In fact, I am advised by the City Engineer that the data submitted by the bidders to whom the contract was awarded, was not sufficient to fulfill the requirements contained in the alternative proposal. This is borne out by the fact that by letter he recommended that the award be made to other bidders.

I direct your attention to the provision in the contract between the City and County of San Francisco and the State Harbor Commission, which provides: "That the City shall furnish and operate buses constructed in accordance with the specifications now on file in the office of the City Engineer." In view of this provision in the contract, there is great danger that the State Board of Harbor Commissioners might refuse to make payment under their contract with the City if the buses were constructed other than in accordance with the specifications on file in the City Engineer's office. It is true that the alternative proposal is a part of the specifications, but to comply with the provision in the contract between the City and the Harbor Commissioners, the specifications of any bid submitted under the alternative proposal would have to have the approval of the City Engineer.

In view of the foregoing, I am of the opinion that the bids accepted by the Board of Public Works do not comply with the specifications, and that the contracts awarded pursuant to said bids are illegal, and that the Board of Public Works should be advised not to enter into said contract, and that no money should be recommended for the payment of the amount of said contracts.

Respectfully yours,

Public Utilities Committee
Board of Supervisors.

CITY ATTORNEY.

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June 2nd, 1926.

SUBJECT: Inspection Fees of Department

of Electricity.

Dear Sirs:

REQUEST.

"This department has pending several cases where registered contractors have failed and gone out of business, leaving hundreds of jobs incomplete or without having a final inspection; and, in one particular case, owing the department between three and four thousand dollars.

Ordinance No. 5192, Section "F", requires that final certificate be issued by this department before current is turned on.

Several hundred jobs installed by the above-mentioned contractor are receiving current from the Power Companies, and, although final inspection has not been made in some cases and has in others, the fees have not been paid and final certificate has not been issued by this department. In either case, current should not have been turned on and all such cases are in violation of the Ordinance. Final certificate must be taken out and it can only be obtained by the payment of inspection fees.

In the case of the contractor referred to above who has failed, the only means left is to send notices to the owners that, unless the fees are paid by a certain date, current will be disconnected, and, in a great many cases, the owners have paid the fees and taken out final certificate.

We disconnected several of this contractor's installations at the verbal advice of the former City Attorney, and an attorney by the name of Muller interested himself in the case of the property owners, and, on his agreement to get out an injunction and make a test case of it, the City Attorney advised us to re-connect the current, which we did, but, up to the present time, nothing has been done and I am desirous of getting some action one way or the other as we must know how to proceed in the future - whether or not this department has the power to disconnect in the case of non-compliance with the Ordinance."

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OPINION.

Ordinance No. 5192, Section "F", provides:

"Every person, firm or corporation placing, installing or erecting any electrical wires, fixtures, appliances, apparatus or construction, or electrically connecting any electrical wires or conductors together, or to any electrical machinery, in or on buildings, or other structures, shall notify the Chief of the Department of Electricity when same is completed. The Chief of the Department of Electricity, or his authorized representative, shall inspect the same, and if in compliance with all ordinances shall issue to the said person, firm or corporation, a certificate of approval. Said certificate shall contain the dates of inspection and in concise terms specify the electrical wires, fixtures, appliances, apparatus or construction thus approved.

Said certificate of approval shall be issued for the installation or erection of the wires, apparatus or fixtures for which a permit has been issued.

No current shall be supplied to such installation until certificate be issued; nor shall any change, alteration or extension be made in the wiring of the building without notifying the said Chief and securing a permit therefor."

Inspection fees ordinarily are to be referred to the police power, and are not taxes. COOLEY on TAXATION, Vol. 4, page 3517. Inspection laws are passed in the exercise of police power, and are for the safety and benefit of the general public, and not for the purpose of procuring revenue. Inasmuch as an ordinance providing for the inspection of electrical installation equipment is for the good of the general public, it is quite imperative that it be as strictly construed as is possible for the general good, looking towards its enforcement.

It will be noted that Section "F" provides for the inspection of electrical installation equipment, and if such equipment is installed in compliance with all ordinances, a certificate of approval shall issue to the person, firm or corporation placing, installing or erecting such equipment. The ordinance further provides that no current shall be supplied to the installation until the certificate is issued. This is only for the purpose of protecting the general public from defective installations, since the ordinance provides that if all ordinances have been complied with, a certificate of approval shall issue.

Section "P" of the same ordinance provides that certain inspection fees shall be paid before a certificate of inspection as provided for in Section "F" is issued by the Department

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of Electricity. Section "P" provides that every person, firm or corporation holding a certificate as master electrician, fixture electrician, or owner electrician, shall pay the fees of inspection before a certificate of inspection is issued.

It would be idle to assume that one could not occupy his building and have electric current conveyed to it simply because the electrician who applied for the original permit, and who did not secure a certificate of inspection, had gone out of business. The intention of the ordinance is that no current should be supplied to any installation until the installation was found not to be defective and in good condition. Current cannot be shut off if the work has been properly done, and through the neglect of anyone a certificate of approval has not been obtained, unless, of course, the work is defective.

The Department of Electricity can only collect inspection fees from the persons mentioned in Section "P". It would be entirely wrong to hold innocent third persons for the payment of inspection fees which should have been paid by an electrician. The ordinance certainly does not compel this. Inspection fees are merely the approximate cost of inspecting the premises. Ordinarily, when erecting a building, one engages an electrician for the purpose of doing the electrical work. The electrician generally in his bid for the job includes the inspection fees. To charge the owner where the electrician has failed to pay will be charging him inspection fees twice. If inspection fees could be charged to the owner, it would necessitate anyone purchasing a building to first ascertain whether or not a certificate of approval of electrical work had been obtained, regardless of the age of the building. The ordinance deals entirely with electrical work done by electricians, and does not concern the owner. It would strike one that it would perhaps be better to collect the inspection fees prior to the time that the building is completed rather than to carry on the books of the City, electricians who might or who might not pay such fees.

When once a building has been inspected, and the electrical equipment has been found to be in good condition, it is the duty of the Department of Electricity to permit the current to be supplied the premises. It must be noted particularly that the ordinance in question is regulatory and is not for the purpose of obtaining revenue.

Sincerely yours,

CITY ATTORNEY.

Department of Electricity.

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June 4th, 1926.

SUBJECT: Taxation of Stock and Bonds of the

California-Oregon Power Company.

Dear Sir:

Your request for an opinion, dated May 21st, 1926, with regard to whether or not the stock and bonds of the California-Oregon Power Company, a California corporation, are subject to taxation, was received by me in due course.

OPINION.

Section 3608 of the Political Code provides:

"Shares of stock in corporations possess no intrinsic value over and above the actual value of the property of the corporation which they stand for and represent. The assessment and taxation of such shares, and also of all corporate property would be double taxation. All property belonging to corporations shall be assessed and taxed, in the manner provided by law; but no assessment shall be made of shares of stock in any corporation except as prescribed in the constitution of this state and the laws enacted pursuant to such provisions of the constitution."

From a reading of the foregoing Political Code Section, it appears that the stock of a California corporation, when its property is located within the State, is not taxable, under ordinary conditions.

In the instant case it appears that 44,211 shares of the common stock, and 16,651 shares of the preferred stock of the California-Oregon Power Company, are owned by the California Power Corporation, and that the California Power Corporation, in addition to said stock, owns three million dollars of general and refunding bonds of the California-Oregon Power Company. It further appears that about sixty per cent to sixty-five per cent of the property of the California-Oregon Power Company is situated within the State of California, including land within the State of California considerably exceeding in value the sum of three million dollars.

Under these conditions, in view of the foregoing Political Code section, it would appear that both the common and preferred stock of the California-Oregon Power Company would be taxable to the extent

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of thirty-five to forty per cent of its value, inasmuch as from sixty to sixty-five per cent of the property represented by the stock has already been taxed, due to the fact that the actual property itself was taxed within the State. The bonds aforesaid seem to be amply covered by land owned within the State of California by the California-Oregon Power Company. In view of Article XIII, Section 1, of the Constitution of 1879, which provides that an obligation by which a debt is secured when land is pledged as security for the payment thereof, together with the money represented by such debt, shall not be considered property subject to taxation, it would seem that the bonds aforesaid of the California-Oregon Power Company, secured by land within the State, are entirely exempt from taxation, and that the stock is exempt to the extent only of the proportion of the property of the company which is located within the State.

> "Shares of stock represent the value of all the assets of the corporation, and while a share is undoubtedly property, it represents an interest in the property held by the corporation itself. When capital stock is assessed, the assets of the corporation are subjected to tax, and since shares represent no value independent of the corporate property, when all such property is assessed to the corporation, it would be double taxation to assess the shares as well as the corporate property. But, as has been pointed out, the result of double taxation could only follow where all of the property of the corporation is assessed, and it could not apply where none or only a portion of the property going to make up the value of the stock is taxed. The only method by which an assessor could avoid double taxation would be to deduct from the value of the shares the value of the property situated in the state of California and taxed directly to the corporation."
>
> 7 CAL. JURIS. Page 246.

In view of the foregoing, I am of the opinion that the stock of the California-Oregon Power Company should be assessed in the proportion hereinbefore indicated, and that the bonds of the Company are entirely exempt from taxation.

Yours truly,

CITY ATTORNEY.

Assessor.

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June 15, 1926.

Miss Veda B. Young,
Secretary Playground Commission,
City Hall,
San Francisco, Calif.

Dear Madam:

Receipt is acknowledged of your letter asking if the Playground Commission should pay the salary of Miss Hagan, former Secretary of the Commission, in the sum of Three Hundred ($300.00) Dollars for the month of April 1926.

You are advised that at the special meeting held by the Commission on the 9th of April when a resolution was introduced declaring the position held by Miss Hagan vacant it did not take effect by reason of only three of the Commission voting aye, and under Section 10 of your Rules it is recited: "No measure or proposition shall be valid unless it is passed by four votes****." At the regular meeting held on April 21st four ayes were recorded in favor of the resolution and the office properly declared vacant.

From the letter of Miss Hagan dated April 28th, 1926, a copy of which you forwarded for my inspection, it appears that she offered to continue in the performance of all duties and obligations incumbent upon the office of said Secretary and this willingness to do her work, although no work was offered her, continues in effect the contract of employment at least for the month of April 1926.

As the resolution adopted by the Commission on January 5, 1921 appointing Miss Hagan as Secretary of the Commission and Director of Play Activities is silent as to the length of the employment and subsequently her salary was fixed at the rate of Three Hundred ($300.00) Dollars a month, the following excerpt from Section 2010 C.C. applies: "A servant is presumed to have been hired for such length of time as the parties adopt for the estimation of wages****."

It is my opinion that Miss Hagan is entitled to the sum of Three Hundred ($300.00) Dollars as her salary as Secretary to the Commission for the month of April.

Very truly yours,

JOHN J. O'TOOLE, City Attorney

By_____
Deputy City Attorney.

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June 8,1926.

SUBJECT: Assessment of Stocks and Bonds
Issued against a Building where
Land is under long term lease,etc.

Dear Sir:-

I am in receipt of your request for an opinion as follows:

> "How should we assess stocks and bonds issued against a building where the land is under a long term lease - and where the building and the lease are held as security for the stocks and bonds when the building reverts to the owner of the land at the expiration of the lease and is the security or guarantee for the lease and is, therefore, a part of the rental. "

OPINION.

Section 3608 of the Political Code provides as follows:

> "Shares of stock in corporations possess no intrinsic value over and above the actual value of the property of the corporation which they stand for and represent. The assessment and taxation of such shares, and a also of all corporate property would be double taxation. All property belonging to corporations shall be assessed and taxed, in the manner provided by law; but no assessment shall be made of shares of stock in any corporation except as prescribed in the constitution of this state and the laws enacted pursuant to such provisions of the constitution."

An examination of the foregoing code section will show that the shares of stock issued by a building corporation where the assets of the corporation are located entirely within the State of California, are not taxable for the reason that the actual value of the property which they stand for and represent is located within this state. (Burke vs. Badlam, 57 Calif. 594 and 7 Cal.Juris.725-7)

By Sec.1 of Art.XIII of the Constitution bonds are named among the several species of property subject to taxation. The Political Code, however, excepts the bonds of railroad and other quasi public corporations. This, of course, would not affect the bonds of a building corporation.

Art. XIII, Sec.1 of the Constitution of the State of California provides in part:

> "* * * provided, that a mortgage, deed of trust, contract, or other obligation by which a debt is secured when land is pledged as security for the payment thereof, together with the money represented by such debt, shall not be considered property subject to taxation."

Thus it may be perceived that the bonds of a corporation issued where the building and the lease thereof are given as security do not come within the exception of the foregoing constitutional provision which states that an obligation by which a debt is secured when land is pledged as security for the payment thereof, shall not be considered property subject to taxation. A leasehold interest is real property (San Pedro etc.R.R.Co. vs. L.A. 180 Cal. 18 at p.21) While it is true that a leasehold interest is property it would, nevertheless, be idle to say that such an interest is land. Whether a building reverts to the owner of land at the expiration of the lease, and is a security or guarantee for the lease, and is thereby a part of the rental, would make no material difference.

Section 3617 of the Political Code provides that bonds are property, hence taxable. The usual procedure in this state, as elsewhere, has been to assess the entire value of the land to the owner of the reversion. Such assessment covers the value of the leasehold as well as the reversionary interest, the sum of the two being comprised in the value of the complete ownership of the land. (San Pedro etc.R.R.Co. vs. L. A. Supra)

Therefore, I would say that the shares of stock are not taxable and that the bonds are taxable.

Respectfully,

City Attorney.

ASSESSOR.

(66)

June 10th, 1926.

SUBJECT: Liability for License Fee of
Corporation maintaining Billboard
Advertising its own business.

Dear Sir:

Your communication of the 1st inst., inquiring of the liability of a corporation for a license tax because of the fact that such organization maintains a billboard advertising their respective business, is at hand. You kindly direct our attention to Ordinance No. 4059 (New Series), and request our opinion to be founded upon an interpretation of same.

OPINION.

The section of the ordinance in question which determines the tax responsibility of the corporation is number three, and the following is the language:

> "No person, firm or corporation shall engage in or carry on the business or occupation of billposting, advertising sign painting or outdoor advertising or maintaining billboards without paying the license fee provided for in this Ordinance."

You will note the essential factor necessary to create a liability for the license fee is that the subject must engage in or carry on the particular action as a business or occupation, and from the statement in your letter, the corporation resisting the payment of tax is pursuing a line of endeavor entirely distinct from advertising or maintaining billboards, and that the erection of the billboard is purely an independent action and an incidence of the business.

Under the circumstances, I believe that the protest made against the tax by the members of the corporation is well taken, and you are therefore advised that the license tax is inapplicable to their situation. For the legal support of my determination, I invite your attention to the authority outlined in the opinion addressed to you from this office under date of May 12th, 1926.

Respectfully submitted,

CITY ATTORNEY.

Tax Collector.

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June 17, 1926.

SUBJECT: Right of Health Dept.
to placard premises condemned
as insanitary.

Department of Public Health,
1085 Mission St.,
San Francisco, Calif.

Gentlemen:

Under date of June 14, 1926, your Department has requested my opinion as to the following:

"1. Has the Board of Health the right to post placards on condemned buildings, notifying the public in general that the premises have been declared insanitary and must not be again occupied without written permission from the Board of Health?

2. Would the Board of Health be authorized to use a stencil for the purpose of making an impression on said property to the effect that the same has been condemned and is insanitary?

3. Is there any method by which the record of the proceedings of the Board of Health in condemnation cases could be attached to and made a part of the record of the City and County Recorder?"

OPINION

For the purpose of carrying out that part of Article 10, Section 3 of our charter reading as follows:

> "The Board shall have the management and control of ***** all matters pertaining to the preservation, promotion and protection of the lives and health of the inhabitants of the City and County; and it may determine the nature and character of nuisance and provide for their abatement."

the Board of Supervisors duly passed Ordinance 501 (New Series).

That ordinance provides that the Board of Health has jurisdiction to declare a building or structure insanitary. This power can only be exercised by the Board after a complaint has been filed, a date set for the hearing thereof and the notice having been given to the owner thereof, and further provides that a notice of said hearing shall be posted in accordance with the provisions of the ordinance.

After these preliminary moves have been taken and the Board has heard the evidence and has declared the building or structure involved to be insanitary, Section 5 of said ordinance provides that after the Board of Health has found that said building or structure is a nuisance and after vacation of said premises has been ordered, a copy of said order shall be posted in a conspicuous place on said structure or building and a copy of said order shall be personally served upon the owner thereof, or his agent, or the lessee, or occupant, and the order shall specify the time at which the building or structure shall be vacated.

No provision is found in any ordinance, our charter or in the state laws which would give the Board the right to stencil said premises and no provision of any ordinance or the charter or state laws provides for the recording of said notice in the Recorder's office.

Therefore, my answers to the questions above are as follows:

1. The Board of Health has the right to post placards on condemned buildings to the effect that said building or premises has been declared insanitary and must not be occupied again without written permission from the Board of Health, and I see no objection to the wording of the sign or placard enclosed in your communication.

2. The Board of Health is not authorized to stencil said premises.

3. No legal method is provided for recording said notice in the office of the County Recorder of the City and County of San Francisco.

Respectfully,

CITY ATTORNEY.

Assessor.

CITY ATTORNEY
SAN FRANCISCO

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July 16th, 1926.

Hon. James Rolph,
Mayor,
San Francisco, Cal.

Dear Mayor:

In reference to the matter of certain dealers in building materials refusing to furnish materials to the contractors engaged in the construction of certain Municipal buildings, I desire to present the following.

While I believe that the phase of the matter which we discussed yesterday, that is, the right of the City to purchase materials from those with whom it has contracts for these materials and to then deliver said materials to the contractors engaged in the construction of our buildings, is possibly the quickest and most effective way of obtaining the necessary materials, still, there are certain legal phases of the situation that I deem it advisable to call to your attention.

The Act of the Legislature, approved March 23, 1907, and commonly known as the "Cartwright Act", regulates trade combinations and provides for penalties to be visited upon those who violate the terms of the Act. While the Act was primarily passed to prevent unlawful combinations for the purpose of discriminating in the prices of materials, I think that it may be broad enough to cover the situation which now confronts the City. The following is the language of the Act which I deem pertinent to the present situation:

> "Section 1. A trust is a combination of capital, skill or acts by two or more persons, firms, partnerships, corporations or associations of persons, or of any two or more of them, for either, any or all of the following purposes:
>
> 1. To create or carry out restrictions in trade or commerce."

It would appear to me that the actions of those who refuse to furnish materials to the contractors upon the City work, are combined together to create and carry out restrictions in both trade and commerce.

The Supreme Court of this State has held that any manufacturer has the right to fix prices for the commodities which it

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sells or manufactures, and even to select its own customers, and to sell to one and to refuse to sell to another, but when such discrimination is the result of a combination or agreement or conspiracy between any particular manufacturer and others, which agreement tends to monopolize or restrict trade or commerce, then the combination becomes unlawful. Therefore, it would be necessary in the present case to show that the refusal of the material men to sell to those who were not conducting their business under the American Plan, was the result of an agreement between the different material men or industrial association, a fact which I presume would not be hard to establish.

Section 7 of the Cartwright Act also provides that any firm, person, partnership or corporation, who shall in any manner violate any of the provisions of the Act, shall for each and every day that such violations shall be committed or continued, after due notice given by the Attorney General or any District Attorney, forfeit and pay the sum of Fifty Dollars, which may be recovered in the name of the People of the State of California in any county where the offense is committed, and it shall be the duty of the Attorney General,or the District Attorney of any county, on the order of the Attorney General, to prosecute for the recovery of the same.

It might be possible that we could interest the Attorney General and the District Attorney to give a notice to some of the material dealers under this Section, and I would be pleased to co-operate in this regard should you deem it advisable. Of course, in addition to the penalty last mentioned, there is the additional penalty of fine and imprisonment provided by the Act for those who violate its provisions.

I quite agree with you that the methods which you are pursuing will possibly be more efficacious in obtaining the materials necessary for our buildings than would any legal proceedings commenced under the Cartwright Act, and I am giving you the information herein contained merely to the end that you may be advised as to the possibility of taking further action should your present efforts prove unsuccessful. In other words, I realize that litigation has many delays, and the needs of the City are such that these materials must be obtained in the shortest possible time.

Assuring you of the desire of my office to co-operate with you in any way that you may deem most advisable in the present difficulties, I am,

Sincerely,

CITY ATTORNEY.

June 17,1926.

Board of Public Works,
City Hall.

Gentlemen:-

My opinion has been asked by your Department as to the best method of procedure in regard to the premises on the South side of Clay street 182 feet 9 inches West of Presidio Avenue, supposedly owned by Olga D. Laib and of which Arthur J. Laib was the architect. The facts as presented to me show that the building so erected on said premises does not comply with the law in that an insufficient portion of said lot remains unoccupied to comply with the law and that a permit was secured for the erection of this building by means of a fraudulent deed to the rear part or portion of ground adjacent thereto.

I have been later informed that no certificate of final completion has been issued as to the building erected on said premises nor has the Department of Electricity issued any certificate of occupancy for the same.

Under Ordinance No.501 (New Series) of the City and County of San Francisco, approved June 22,1909, the Department of Health is authorized to declare buildings insanitary and to post notices of the vacation of said premises thereon. And it is further enacted that the order of the Department of Public Health shall be enforced by the Police Department of this City and County.

It might be well if a complaint were filed as against these premises before the Board of Health and that the Board of Health would thereafter in compliance with Ordinance No.501 (New Series) duly have a hearing thereon to ascertain whether in its judgment these premises are insanitary by reason of the fact that an insufficient part or portion of the lot area is left unoccupied by buildings. And if the Board declared said premises insanitary and ordered the vacation of the same that the Police Department be called upon to enforce said order.

Section 8 of Act 8548, known as the Tenement House Act, approved April 16,1909, Stats. 1909, p.948, provided that a "certificate of final completion" and "permit of occupancy" shall first be procured before a tenement house may be occupied.

As no certificate of final completion or permit of occupancy has been granted for the premises involved it is my opinion that such premises are being occupied illegally and the Board of Health would have the right to order said premises vacated for said reason.

Another view of the situation might well be taken to the effect that no permit was ever issued for the erection of this building in that fraud was the basis for the issuance of the same and that condemnation of the building might be had by the Board of Public Works for this reason. In my judgment, however, the procedure outlined calling for action by the Board of Health is the most advisable.

Yours truly,

City Attorney.

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June 17th, 1926.

SUBJECT: Pensions of Retired Teachers.

Gentlemen:

Your request for an opinion dated May 18th, 1926, regarding the following is at hand:

REQUEST.

"By direction of the Committee on Civil Service and Retirement, I am transmitting to you for your opinion as to its legality the attached ordinance amending Ordinance No. 5561 (New Series) which is intended to bring under the San Francisco City Employees' Retirement System persons, within the limitations of service and age as stated in the proposed Ordinance, who resigned or retired as teachers in the San Francisco School Department prior to the date upon which teachers became eligible for membership in the Retirement System.

The Committee desires to be advised as to whether the adoption of this proposed ordinance would be legal and accomplish the purpose for which it is intended.

If, in your opinion, the adoption of this ordinance would not be legal, will you kindly advise the Committee if these persons could be made members of the Retirement System and be entitled to its benefits by the adoption of any other ordinance, or if that is not possible, by Charter Amendment.

In brief the Committee on Civil Service and Retirement is desirous of knowing if there is any legal way by which these persons can be granted a pension by the City and County of San Francisco."

OPINION

The subject matter of your inquiry is approached with the kindliest feelings to the retired teachers who formerly served in the San Francisco School Department, and with a

full realization of the services which they have rendered to their city as well as the worthiness of any legislative enactment which will accord them the relief which they seek.

The matter of the retirement of the teachers at present in the Department is provided for in the Charter Amendment of 1924, and the purpose of the proposed ordinance submitted to me is to care for those who were retired prior to the amendment becoming effective, and to give to them some benefit thereunder.

Notwithstanding the worthiness of the purposes of the ordinance, I am of the opinion that its adoption will virtually amount to a gift of public moneys, and will fall within the inhibition of the provisions of Section 32, Article IV of the Constitution of the State of California which reads as follows:

> "The Legislature shall have no power to grant, or authorize any county or municipal authority to grant, any extra compensation or allowance to any public officer, agent, servant, or contractor, after service has been rendered, or a contract has been entered into and performed, in whole or in part, nor to pay, or to authorize the payment of, any claim hereafter created against the State, or any county or municipality of the State, under any agreement or contract made without express authority of law; and all such unauthorized agreements or contracts shall be null and void."

The matter of the allowances of pensions generally has been the subject of much judicial opinion in the Courts of the County, and in those states whose constitutional provisions are similar to our own (above quoted), the allowance has been sustained only upon the ground, that a pension is a portion of the compensation provided for in the contract of employment, and is therefore not a gratuity, provided the pensioner was in the employ of the state or municipality at the time the act authorizing the pension was adopted. None of the decisions however sustain the allowance of a pension to one who had retired from the public service prior to the pension act becoming effective.

On this subject the Court of Appeals of New York in the case of Mahon vs Board of Education, reported in 63 N.E. 1107, held that the laws of 1900 empowering the Board of Education to place on the retired list of teachers entitled to receive an annuity of one-half of the salary paid to them at the time of retiring, certain teachers who had retired prior to the passage of the act creating the pension fund, was unconstitutional, inasmuch as it contravened the constitutional provision forbidding any city to

make a gift of public money. This case has received the approval of many of the highest courts of the country including the Supreme Court of our own State.

See O'Dea vs Cook, 176 Cal 661. In this case the Court said "a pension is a gratuity only where it is granted for services previously rendered which at the time they were rendered gave rise to no legal obligation."

The same decision finds approval in the case of Home vs Souden, 49 Cal Appellate Decision 352.

In view of these decisions I am of the opinion that a pension granted to one who had retired from the Department prior to the bringing of the teachers under the provisions of the San Francisco Employees Retirement System would be in the nature of a gift or bonus and would therefore be against the provisions of our Constitution.

You are therefore advised that the ordinance submitted to me would provide for the illegal expenditure of money and should not receive the approval of your committee.

Sincerely yours,

CITY ATTORNEY

To the Civil Service and
Retirement Committee of the
Board of Supervisors.

(10)

70

June 21, 1926.

SUBJECT: Contributions by members of Police and Fire Departments to Retirement System.

Dear Sirs:

REQUEST

Can the Board of Administration of the Retirement System legally accept contributions on salary earned by individuals, since the establishment of the San Francisco City Employees' Retirement System, while those individuals were serving in positions by virtue of which they were members of either the Police Relief and Pension Fund or the Firemen's Relief Fund, the acceptance of such contributions causing the city to contribute an equal amount, as provided in the Retirement Law.

OPINION.

The Retirement System of the City and County of San Francisco, as provided in Article XVII of the charter, and Ordinance 5561 (New Series) was not intended to provide for any benefits whatsoever for Policemen and Firemen who are already members of a pension system. Section 4 of the ordinance, part b. provides that members of the Police Department and Fire Department shall not become members of the Retirement System. This simply means that members of the Police Department and Fire Department shall not in anywise participate in the benefits of the Retirement System, hence the Board of Administration of the Retirement System cannot legally accept contributions on salary earned by individuals while serving in positions wherein they were members of either the Police Relief and Pension Fund or the Firemen's Relief Fund.

The theory of the framers of the charter provision dealing with the retirement of city employees

and the intention of the Board of Supervisors in the passing of the ordinance was that the City Employees' Retirement System should be entirely independent of the benefits provided for members of the Fire and Police Departments by our charter.

Respectfully yours,

City Attorney.

Board of Administration
San Francisco City Employees'
Retirement System.

(71)

71

June 24,1926.

SUBJECT: Board of Education is not Liable for an Accident Befalling a Student in one of its School Buildings.

Members:-

I am in receipt of a letter under date of June 16,1926, from the secretary of your Board, requesting an opinion as to the liability of your Board for an accident which befell a pupil in one of your school buildings.

It appears that a student of the Crocker Junior High School suffered a fractured arm during a regular gym period, and while he was wrestling under the instruction and supervision of the regular gymnasium instructor.

OPINION.

The general rule in this country is that a school district, municipal corporation, or school board is not, in the absence of a statute imposing it, subject to liability for injuries to pupils of public schools suffered in connection with their attendance thereat, since such district, corporation or board, in maintaining schools, acts as an agent of the state, and performs a purely public or governmental duty, imposed upon it by law for the benefit of the public, and for the performance pf which it receives no profit or advantage.

9 A. L. R. 911; citing with approval numerous cases of the rule above quoted.

See also-

14 A.L.R. 1392; 24 A.L.R.1070.

Section 1623, Political Code of the State of California, among other things, however, provides that:

> "Boards of school trustees. * * * * * * and boards of education are liable as such in the name of the district * * * * * for any judgment against the district on account of injury to any pupil arising because of the negligence of the of the district or its officers or employees, * * * * *"

The section further provides:

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"Members of the boards of school trustees and city boards of education shall not be held personally liable for accidents to children going to or returning from school or on the play-grounds or in connection with school work."

See also-

Kellar vs. City of Los Angeles,179 Cal.605;
Chafer vs. City of Long Beach,174 Cal. 478;
citing with approval
Hill vs. City of Boston,122 Mass. 344; 23 Am. Rep.332)

The latter case was an action of tort against the City of Boston to recover damages for injuries received by a child while attending a public school, under the express duty imposed by general law to maintain such public schools, and it is held that the municipality is not liable.

The correspondence received in this matter does not indicate whether or not there was any negligence on the part of any officer or employee of the school department at the time of the accident herein referred to happened; and particularly as to the gymnasium instructor,which was the cause or contributed to the injury received by Thomas A. Foley.

In the absence of negligence, I would advise that there is no liability upon your Board for the unfortunate accident and injury suffered by Thomas A. Foley.

Respectfully,

City Attorney

BOARD OF EDUCATION.

72

72

June 28,1926.

SUBJECT: Transfer of Surplus Funds
of Municipal Railway.

Gentlemen:-

I am in receipt of your request that you be advised as to whether or not the Board of Supervisors has the power to transfer to the Board of Public Works, moneys from the surplus earnings of the Municipal Railway with the express understanding that the moneys so transferred shall be used for the increase of wages of certain employees in the operating department of the railway.

OPINION.

You are advised, that until the Charter amendment of 1924, commonly known as "The Standardization of Salaries Amendment" becomes effective, the salaries of all employees of the Board of Public Works are to be fixed by that Board, and therefore if any increase of wages to employees is to be made that increase must come from the Board of Public Works. However in the matter of appropriation from the railway funds, the Board of Supervisors has sole authority to grant or withhold the appropriation as it may see fit. - See-Sec.16,Art.XII".

> "Whenever any public utility shall be operated by the City and County, the receipts from such utility shall be paid daily into the city treasury, and maintained in a special fund set aside for such utility. The Supervisors may, from time to time, make appropriations from such funds for the following purposes:
> (a) For the payment of the operating expenses of such utility;
> * * * * * * * * * * * * *"

You are advised that the right to appropriate money for operating expenses gives the Board the right to determine for what particular purpose of operation the appropriation shall be used for, and therefore should the Board make an appropriation to the Board of Public Works for the specific purpose of increasing the pay of certain employees, the money so appropriated must be used for that purpose, or not used at all.

Respectfully,

FINANCE COMMITTEE
BOARD OF SUPERVISORS.

City Attorney

72

(73

73

June 28th, 1926.

SUBJECT: Platform and Bulkhead
on Saturn Street.

Dear Sirs:

REQUEST.

We respectfully request that you advise us with regard to whether or not a concrete wall and runway located in front of the premises at No. 58 and No. 60 Saturn Street, and built at the owner's expense, may be permitted to remain.

OPINION.

Article VI, Chapter I, Section 9, Part 1 of the charter of the City and County of San Francisco provides that the Board of Public Works shall have charge, superintendence and control of all public ways, streets, etc., and of the manner of their use. In view of this charter provision, it appears that the Board of Public Works has complete control over the manner of the use of public streets, alleys, etc. Therefore, I would say that the Board of Public Works has the authority to permit the construction of the concrete wall and runway aforesaid. The street can hardly be classed as such since it consists of a stairway with openings extending onto walks leading to the dwelling houses fronting on the street. The concrete wall and runway herein mentioned is peculiar in itself and was necessary to be constructed owing to the peculiar nature of the street and its extreme grade.

When it is impracticable to pave a street the Board of Public Works may provide stairways, runways, walks or bulkheads. The right of a property owner to travel over such a hilly street would carry with it the right to enter his dwelling house contiguous to the street, and if it were impossible to enter such dwelling houses in the normal manner, it would be lawful and permissible to have a concrete wall and runway erected, as in this instance, so that the tenants of the houses in question could freely enter and leave same.

Respectfully yours,

City Attorney.

Department of Public Works.

73

Dear Sirs, 1914.

Subject: Platform and Railroad
on Jefferson Street.

Dear Sirs:

[illegible]

[illegible]

[illegible]

73-a

June 28th,1926.

Mr. Frank C. Havener,
Supervisors' Chambers,
City Hall,
City.

Dear Sir:-

In response to your request as to whether or not the Board of Supervisors in granting a ferry franchise pursuant to the provisions of the Political Code bearing on that subject has the right to provide in the franchise that it shall not be assigned without the consent of the Board, I beg to advise you that it is my opinion that the Board has the right to insert in the franchise a provision against assignment without its consent.

This principle seems to have been decided in the case of People vs. Lawley reported in 17 Cal. App. page 331. This was a case where one Lawley was granted permission by the State Legislature to construct and conduct a toll road in the County of Napa, and I direct your attention to the language of Judge Hart on the particular phase of the inquiry in which you are interested.

> "I do not, however, intend to be understood as holding that the state could not have made the procurement of its consent a prerequisite or a condition precedent to the exercise of the right by the grantee to transfer the franchise; but the state has not done so in this case by express language or by language reasonably capable of the construction that such was its intention. The state always retains or reserves the power to regulate and control such franchises wherever they may go to to whomsoever's hands or ownership they may be transmitted, and its chief and, indeed, only concern with regard to such grants is that they shall not only be used for the purpose which they are created to subserve, but so used as not to injure the public or trespass upon its rights . Having this power of supervision or control over such grants, the state

June 13th, 1911.

Mr. Frank C. Turner,
Conservators' Chambers,
City Hall,
City.

Dear Sir:-

In response to your request as to whether or not the Board of Conservators is granting a ferry franchise pursuant to the provisions of the Political Code covering on that subject has the right to provide in the franchise that it shall not be assigned without the consent of the Board, I beg to advise you that it is my opinion that the Board has the right to insert in the franchise a provision against assignment without its consent.

This principle seems to have been decided in the case of People vs. Lawley reported in 17 Wal. Rep. page 831. This was a case where one Lawley was granted permission by the State Legislature to construct and conduct a toll road in the County of Tioga, and I direct your attention to the language of Judge Hart on the particular phase of the in which you are interested.

"I do not, however, intend to be understood as holding that the state could not have made the requirement of its consent a prerequisite or a condition precedent to the exercise of the right by the grantee to transfer the franchise; but the state has not done so in this case by express language or by language reasonably capable of the construction that must be its intention. The state always retains or reserves the power to regulate and control such franchises whenever they may go to to whomsoever's hands or ownership they may be transmitted, and its chief end, indeed, only concern with regard to such grants is that they shall not only be used for the purpose which they are created to subserve, but so used as not to injure the public or trespass upon its rights. During this period of supervision or control over such grants, the title

may forfeit them and all rights acquired thereby where they are not used or where they are misused. There is, therefore, no necessity for imposing restraints upon or in any way fettering the power of alienation as to estates thus created and thus rendering their value as property exceedingly precarious."

Trusting this will be sufficient information for you, I am,

Sincerely yours,

City Attorney.

June 30,1926.

SUBJECT: BUS FRANCHISES.

Gentlemen:-

Under date of June 17,1926, your Honorable Board has requested that I outline for you the necessary legal proceedings as well as the necessary legislation for the granting of a motor bus franchise as proposed in an application or petition filed with the Board of Supervisors by William J. Gaffney.

OPINION.

All franchises or privileges granted by boards of supervisors are governed by the provisions of what is known as the "Broughton Act".

The "Broughton Act" of March 22,1905,
1905 Stats. p.777;

Amend.Stats. 1909, p.125;
Amend.Stats.1915 , p.1303;
General Laws Act, p.229;

Upon an application being filed with the Board of Supervisors that body shall, in its discretion, advertise the fact of said application, together with the statement that it is proposed to grant the same, and this advertisement shall be published in the official newspaper of this City and County. The advertisement must state that bids will be received for such franchise and that it will be awarded to the highest bidder and must be published once a day for ten successive days. No action shall be taken within twenty days nor more than thirty days after publication is completed.

The publication must state the character of the franchise, the term for which it is to be granted, and, in this instance, the routes to be traversed; that sealed bids therefor will be received up to a certain hour and day named in the advertisement.

The advertisement must state that the franchise will be struck off, sold or awarded to the person, firm or corporation making the highest cash bid therefor, provided further, that at the time of the opening of said bids any such person, firm or corporation may be present or represented and may bid for said franchise or privilege a sum of not less than ten per cent above the highest sealed bid therefor and any bid so made may thereafter be raised not less than ten per cent of any responsible bidder until said franchise is awarded to the highest bidder, and said bid shall be accompanied by cash or certified check for the full amount of said bid. Said bidder may deposit the cash or certified check for ten per cent of the said bid and within twenty-four hours thereafter deposit the remaining ninety per cent of the amount thereof. In the event of failure so to do said bid shall be void.

The successful bidder shall also file a running bond guaranteeing the carrying out of the provisions of said franchise.

I direct your attention to the following clauses in the amended application, which I believe contain conditions which cannot be legally complied with.

I. Paragraph 6th provides that neither the city, nor the Board of Supervisors nor its officers, shall grant to any other person any franchise right or privilege of operating busses of any description over the route proposed in the franchise. You are advised that the Board of Supervisors has not the authority to grant an exclusive permit or franchise. There is no provision contained in our charter under which the franchise asked for can be granted, therefore you must look to the general laws of the state for such authority. The Act of the Legislature of 1905, and amended 1909, and 1915, commonly known as the "Broughton Act", regulates the granting of franchises by counties and by municipalities. There is nothing in this Act authorizing the grant of an exclusive franchise, and as grants of power to municipalities by the State Legislature must be strictly construed, municipalities have under the Act only the powers specifically granted to them.

A municipality has no power to grant an exclusive franchise to use the streets, to a public service corporation, unless the power not only to grant a franchise, but also to grant an exclusive franchise has been delegated to it by the Legislature either expressly or by necessary implication.

See McQuillan Mun. Corps. 1633,p.3413 and cases cited.

The Supreme Court of the United States in Water, Light & Gas Co.v.Hutchinson, reported 207 U.S. 385, has said: "A grant of power to confer such a privilege (i. e. to grant a franchise) is not necessarily a grant of power to make it exclusive".

You are therefore advised that it is beyond the power of the Board of Supervisors to insert in the franchise applied for, any provision that will render it an exclusive right or privilege.

II. Paragraph 9th - Provides that no tax other than the revenue provided for in the franchise shall be collected from the applicant. While possibly this provision is not illegal, I direct your attention to the fact that such a provision would prevent the city from ever collecting any taxes on the physical property of the owner of the franchise.

III. Paragraph 10th, makes provision for the assignment of the franchise under certain conditions, and provides that if the franchise is assigned to any person, firm or corporation operating a street railway, that the city may terminate the franchise. I direct your attention to the fact that there is nothing in the application which will prevent any street railway acquiring the capital stock of the corporation which may own the franchise, and thereby acquire control of it as effectively as if it was transferred directly.

IV. Paragraph 11th, provides for the acquiring of the franchise by the City under certain conditions. The language of this paragraph fails to provide any means for determining the value of either the franchise or the properties used in connection therewith. This failure would necessitate proceedings either before the Railroad Commission or in the courts, or perhaps both, to determine value. Furthermore, it provides for the value of the franchise. I direct your attention to the difficulty of fixing the value of the franchise exclusive of the physical properties used in connection therewith.

In view of the foregoing, I again advise you that the Board of Supervisors has not the power to make this franchise exclusive, and I believe that the other matters adverted to should receive the careful consideration of your Committee.

Sincerely yours,

CITY ATTORNEY.

To the Public Utilities Committee.

(16)

16

July 6th, 1926.

SUBJECT: Modern Languages being taught in Junior High Schools.

Dear Sir:

REQUEST.

Since modern languages are being taught in the San Francisco junior high schools (covering the unit of 7th, 8th, and 9th grades), may we consider that full and due compliance with the provisions of the law is being had?

OPINION.

Section 1665a of the Political Code provides:

> "The board of education in every city of the first and first and one-half classes shall establish and maintain in each of said cities of the first and first and one-half classes at least one public school in which shall be taught the French, Spanish, Italian and German languages or any of them in connection with the studies in the English language prescribed to be taught by section 1665 of the Political Code of the state of California. Such schools shall be designated as cosmopolitan schools, and shall be subject to such rules and regulations as may be prescribed by said boards of education of said cities of the first and first and one-half classes wherein said school or schools shall be established and maintained; provided, that the schools provided for in section 1665a may be established by the board of education of any city or city and county when by such board it may be deemed necessary or advisable."

In view of the foregoing section of the Political Code, it appears that since the City and County of San Francisco is teaching modern languages in the San Francisco junior high schools the intent and purpose of the law is

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being fully complied with. The term "cosmopolitan" is simply a designation and may or may not be used in the name of the school.

Yours respectfully,

CITY ATTORNEY.

Superintendent of Schools,
City Hall,
City.

July 8th, 1926.

SUBJECT: Power of Fire Department
to Demote an Officer.

Gentlemen:

Under date of June 15, 1926, you asked my opinion as to the power of the Board "to demote an officer as a penalty after charges have been heard at a public hearing and the defendant allowed to be represented by attorneys and witnesses introduced in his behalf."

You state a hypothetical case would be where a Captain in the department was brought to trial for being under the influence of liquor while on duty, and after a fair trial the Board found such officer guilty, and your question specifically is whether the Board would have the right to demote the officer to the position of Lieutenant as a penalty.

OPINION.

The powers granted to the Board of Fire Commissioners are what is known as delegated powers and must be found in the charter, and when so found must be strictly construed, as it is the rule that all powers not especially delegated are reserved.

Sections 7 and 8 of Article IX, Chapter I, of our charter gives your Honorable Board the right to transfer or dismiss a member of your Department after a trial before the Commissioners. The Commissioners may also make reasonable rules and regulations for conducting the affairs of the Department and may fine or suspend a member of the Fire Department for their violation.

As the terms used in the two sections mentioned are very plain no authorities are necessary for their construction, and it is my opinion that the Board of Fire Commissioners has no right to demote a member of the Fire Department as a penalty

for violation of any rules or regulations, but must impose the penalty as outlined in Article IX, Chapter I of our charter.

Yours truly,

CITY ATTORNEY.

Board of Fire Commissioners
City Hall,
City.

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78

July 10th, 1926.

SUBJECT: Collection of Unpaid License Tax
from Purchasers of Businesses.

Dear Sir:

I am in receipt of a letter from you under date of April 12th, 1926, and in which letter the following questions are asked:

"1. In the matter of taxes, the Government is protected and can never lose its claim for payment of unpaid taxes. A lien always holding regardless of change of ownership. Does not the same rule hold for transfers of licenseable business on which no license tax has been paid?

2. Is not every buyer obligated to see that the licensable business which he purchases has a paid up license at the moment ownership changes?"

You also request that you be advised as to what rights the City has to collect unpaid revenues in the instances referred to, and particularly where the former owner can no longer be located, can you hold the present owner for unpaid license fees.

OPINION.

In reply to your query number one, regarding the predication of a lien upon a business where the license for conducting the same has not been paid, similar to the imposition of a lien on real and personal property for failure to pay the assessed tax, I direct your attention to the fact that legislation enabling such a procedure must be in effect before a business can be so burdened.

Insofar as no provision for the imposition of a lien upon the licensable businesses has been placed in the License Ordinance No. 5132 (New Series), the unpaid license represents a debt due from the operator or owner of the business to the municipality.

Therefore, your question number one must be answered in the negative.

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(78)

Referring to your second inquiry relative to the obligation of a prospective buyer of a licensable business in ascertaining the condition of the license, I invite your attention to the old legal maxim, that all persons are presumed to know the law, and if they assume a condition bearing legal consequences, they are bound by the results of their determination.

A buyer in purchasing a licensable business, determines the purchase price upon the relation of the liabilities to the assets, and as I outlined above, the legal effect of unpaid licenses is a debt, his assumption of the business is an acknowledgment of the liability, the unpaid license taxes.

Wherefore, he, the buyer, or operator, thus assents to the proper payment of the outstanding debt, and upon refusal to pay, may be sued by your office, under the provisions of the License Ordinance.

Respectfully,

CITY ATTORNEY.

Tax Collector.

(79

Opinion of July 12th, 1926. Changes to within opinion, on same subject Second hand dealers

July 16th, 1926.

SUBJECT: Second Hand Dealers' Permits.

Gentlemen:

Your request for an opinion regarding the following, is at hand;

REQUEST.

"There are a number of persons, firms and corporations in San Francisco handling second-hand typewriters, adding machines and cash registers. Some of these buy and sell these articles outright and others take them in trade or part payment when new ones are purchased.

Several of these persons have permits from this Board as second-hand dealers to engage in such business, and there are a number of others engaged in a similar business who do not hold permits from this Board and who have been directed to obtain permits as second-hand dealers as provided for in the ordinance of the Board of Supervisors regulating second-hand dealers.

Before definite action is taken on these applications, we would like to know whether or not

First: Is a permit required from this Board by a person, firm or corporation that takes in trade a second-hand typewriter, adding machine or cash register as part payment for new goods purchased?
and

Second: Is a permit required from this Board by a person, firm or corporation that deals in buying or selling second-hand typewriters, adding machines or cash registers where the said articles are not taken in in trade or as part payment for new goods purchased?"

[illegible]

OPINION.

Article VIII, Chapter III, Section 9, of the Charter of the City and County of San Francisco, provides that the Board of Police Commissioners has the right to grant or refuse to grant permits to any person engaged or desiring to engage in business as a dealer in second-hand merchandise.

Ordinance No. 5132 (New Series) of the City and County of San Francisco, Section 63 thereof, provides as follows:

> "Every person, firm or corporation engaged in the business of buying, selling or exchanging second-hand goods, such as provisions, goods, wares, merchandise, medicines, drugs, jewelry, precious metals or wares, shall (after securing a quarterly permit from the Board of Police Commissioners to carry on the business), pay a license of twenty-five (25) dollars per quarter."

In view of the language of the ordinance quoted, the same answer cannot be given to both of the questions asked. Directing consideration to your first question, I am of the opinion that a person or firm may to some extent deal in second-hand articles, and still not come within the category of being "engaged in the business of buying, selling or exchanging second-hand goods". If the person or firm is engaged in the business of merchandising or dealing in new goods as the major part of their calling or enterprise, and should take a second-hand article as a part payment on new goods sold to the owner of the second-hand article, or allow a credit on the purchase of a new article to the amount of the value of the second-hand article surrendered, such transactions would not make the person or firm a second-hand dealer, or a dealer in second-hand goods. A dealer in second-hand goods makes his profit on the sale of the second-hand article, while the dealer in new goods makes his profit on the sale of the new goods even though a portion of the profit be the second-hand article for which the credit has been allowed. The District Court of Appeals notes the distinction mentioned. See In re Higgins- 50 Cal. App. 533, where the Court uses the following language:

> "There is a clear distinction between the business of buying at the lowest price second-hand automobiles for resale, and the business of selling new cars at the highest price and taking used cars in part payment. In the one case the object is to make a profit on the original sales of new cars and on the other to make a profit on the purchase of second-hand cars. These reasons furnish a sufficient ground for a classification between the two classes of dealers in second-hand cars."

Article VIII, Chapter XII, Section 3, of the Charter of the City and County of San Francisco, provides that the Board of Police Commissioners has the right to grant or refuse to any person applying for or holding a permit to operate an [illegible] business or conduct [illegible].

Ordinance No. 1538 (The Penal Code of the City and County of San Francisco, Section 33 thereof, provides as follows:

"Every person, firm or corporation engaged in the business of [illegible], public or semi-public, such as [illegible], [illegible], [illegible], [illegible], [illegible], [illegible], [illegible] [illegible] [illegible]

You are therefore advised that if the business of person mentioned in your first inquiry is primarily and principally dealing in new merchandise, the fact that he accepts a second-hand article of a like nature, in part payment of new merchandise sold does not make him a second-hand dealer, and he is not required to obtain a permit from your board. Let it be understood however that the principal business must be dealing in new merchandise, for the mere fact that a person carries some new goods and sells same with second-hand goods will not exempt that person from the provisions of the ordinance.

As to the second question asked, I am of the opinion that a person such as you mention in that inquiry is a person engaged in dealing in second-hand merchandise.

The term "merchandise" is sufficiently broad to include the articles mentioned. See In re Holmes 187 Cal. 640. Holding that books are merchandise, and defining merchandise as "the objects of commerce, whatever is usually bought and sold in trade, or market, by merchants; wares, goods, commodities".

See also In re Dees 50 Cal. App. 11. Defining the word "goods", as every species of property which is not "real estate".

I am therefore of the opinion that a person who deals in second-hand typewriters, etc., is "engaged in the business of dealing in second-hand goods and merchandise", and you are accordingly advised that under the provisions of the ordinance quoted he must obtain a permit from your board as provided in the ordinance.

Sincerely yours,

CITY ATTORNEY.

To the Board of Police Commissioners.

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July 12th, 1926.

SUBJECT: Unlawful Zoning of Districts.

Milton Marks, Esq.,
and City Planning Committee of
Board of Supervisors.

Dear Sirs:

REQUEST.

"I request an opinion respecting the following situation: The Board of Supervisors in 1921 adopted the Zone Ordinance by virtue of which the property bounded on the north by Vicente Street, on the east by a line 120 feet easterly from and parallel with the easterly line of 46th Avenue, on the south by Sloat Boulevard and on the west by the Great Highway, was classified as follows: In the First Residential District with the exception that the Sloat Boulevard frontages of the blocks bounded by Wawona Street, Sloat Boulevard, 46th Avenue and the Great Highway and the Great Highway frontages of all of the property hereinabove mentioned were zoned commercially. This is indicated upon the Zone Maps adopted and made a part of the Ordinance in 1921.

On July 13th, 1925, Ordinance No. 6695 New Series was passed reading as follows: "Section 1. Section 5 of the use of Property Zone Maps constituting a part of said ordinance is hereby ordered changed so as to place the property bounded on the north by Vicente, on the east by a line 120 feet easterly from and parallel with the easterly line of 46th Avenue, on the south by Sloat Boulevard and on the west by the Great Highway, in the Commercial District instead of the First Residential District where not already so classified. Section 2. It is the purpose of this ordinance to permit the use of the property hereinabove described and not heretofore included in the Commercial District to be used for automobile parking purposes and the use of said property for any purpose not permitted in a First Residential District is hereby expressly prohibited."

On December 7, 1925, the Board of Supervisors passed Ordinance No. 6871 New Series, reading as follows: "Be it ordained by the People of the City and County of San Francisco, as follows:

Section 1. Ordinance No. 5464 (New Series), the title of which is above recited, is hereby amended, as follows:

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Section 5 of the Use of Property Zone Maps constituting a part of said ordinance is hereby ordered changed so as to place the property bounded on the north by Vicente Street, on the east by a line 120 feet easterly from and parallel with the easterly line of Forty-sixth Avenue, on the south by Sloat Boulevard and on the west by the Great Highway, in the Commercial District instead of the First Residential District where not already so classified.

Section 2. The purpose of this ordinance is to permit the erection of a high-class hotel upon the area herein described, together with such adjuncts of a commercial character as may be customary in a general plan to provide for public demands and to include a theater, garage, restaurant, cottages, clubhouse, bowling alleys and places for the sale of merchandise, subject to application to property City authorities where required, but it shall not be held to include an amusement park or any of the concessions or activities usually conducted therein.

Section 3. Ordinance No. 6695 (New Series) is hereby repealed."

I desire an opinion in response to the following queries.

1. In view of the uses permitted by the original zone ordinance No. 5464 adopted in 1921, Section 5 of which prescribes the classes of structures and business permitted in a Commercial district, does any limitation other than that set forth in Section 5 of the original ordinance exist with respect to the property hereinabove described?

2. Did the Board of Supervisors in view of the uses permitted by the original Zone Ordinance possess the power by Section 2 of Ordinance No. 6695 to limit the use of the property thereby zoned as Commercial to an automobile parking station?

3. Did the Board of Supervisors in view of the uses permitted by the original Zone Ordinance of 1921 possess the power to limit the use of the property thereby rezoned as Commercial to the classes of structures and business set forth in Section 2 of Ordinance No. 6871?

4. Does the language of Section 2 of Ordinance No. 6871 constitute Legislation effecting a limitation or does it consist merely of the expression of intention?

5. What is the extent of the limitation, if any, as to the use of the property fixed by Section 2 of Ordinance No. 6871?

6. Does the language of Section 2 of Ordinance No. 6871 seek to prohibit any commercial use other than an amusement park? "

OPINION.

In California it is well settled that there is no objection to zoning ordinances as such. It is thoroughly established in this country that the rights preserved to the individual by the constitutional guarantees are held in subordination to the rights of society and the general welfare.

The courts are required in considering the validity of zoning ordinances, to determine in addition to the need thereof, whether or not they are arbitrary and discriminatory in their conception and application, and whether they have any reasonable tendency to promote the public morals, health, safety or general welfare and prosperity of the community. The regulation of the development of a city under a comprehensive and carefully considered zoning plan tends to promote the general welfare of the community, and the adoption and enforcement of such a plan, when fairly conceived and equably applied, is well within the scope of the police power and is constitutional.

The purpose of comprehensive zoning is the attainment of unity in the construction and development of a city along lines of reasonable regulations which tend to promote the health, safety, morals and general welfare of the community, and to accomplish this purpose there must be definitely in the minds of the makers of a comprehensive zoning system, a plan in outline at least sufficiently extensive so that when embodied in an enacted ordinance, a reviewer thereof may say with confidence that it will redound to the welfare of the city as a whole, and that any part of that plan is reasonably related thereto.

In MILLER vs. BOARD OF PUBLIC WORKS, 195 Cal. 477, at page 488, the court said:

> "It may be taken as now well settled that courts are required in considering the validity of zoning ordinances to determine, in addition to the need thereof, whether or not they are arbitrary and discriminatory in their conception and application and whether they have any reasonable tendency to promote the public morals, health, safety, or general welfare and prosperity of a community."

And further on page 489:

> "It cannot be gainsaid, however, that many municipalities, evidently upon the theory that zoning is a panacea for civic ills, have, under the guise of zoning, sought to enact and enforce unreasonable and discriminatory ordinances. Some of these attempted regulations have been palpably for the exclusive and

CONCLUSION.

preferential benefit of particular localities."

"In the determination of this problem two questions present themselves: (1) Is the scheme of zoning as a whole sound, that is to say, is the method of classification and districting reasonably necessary to the public health, safety, morals, or general welfare? And (2) Has the scheme of classification and districting been applied fairly and impartially in each instance?"

Thus, it may be readily perceived that the whole theory of zoning is predicated upon the idea that there shall be no unreasonable discrimination shown, and that a comprehensive zoning plan should be established, if at all, for the benefit of all of the people.

In answer to Query No. 1: In view of the foregoing, I would say that Ordinance No. 6695 (New Series) including both sections thereof, as passed on July 13th, 1925, was wholly void and invalid, since it did not carry out the comprehensive zoning scheme previously enacted by the passage of Ordinance No. 5464 (New Series), and for the further reason that it was unreasonably discriminatory. I am of the opinion that Ordinance No. 6871 (New Series), including all sections thereof, passed on December 7th, 1925, is likewise void and invalid, for the same reason. Hence, it is my opinion that the property outlined was and still is in the First Residential District, with the exception of the Sloat Boulevard frontages of the blocks bounded by Wawona Street, Sloat Boulevard, 46th Avenue, and the Great Highway, and the Great Highway frontages of all of the property hereinabove mentioned, which were zoned commercially.

Ordinance No. 6695 (New Series) being ineffective, and Ordinance No. 6871 (New Series) being likewise without effect, the original ordinance, as it was prior to the time of the passage of the void and invalid amending ordinances, would stand, particularly in view of the fact that the rule appears to be that parts of an ordinance relating to the same subject are generally to be construed together, and since in this instance all of the parts of the void and invalid amending ordinances are so inter-related that they form a composite whole, both of the amending ordinances would be of no effect.

18 CAL. JURIS. 933
ROBERT vs. POLICE COURT, 148 Cal. 131.

"The provisions of the ordinance are to be considered as a whole, and it is not to be assumed that the city council would have adopted the first

clause without enacting the condition thereto. The connection of the two clauses by the conjunction "unless" shows that they are to be taken together, and that the first clause does not by itself express the legislative will of the council. It is well established that a statute may be in part constitutional, and in part unconstitutional, and, if the parts are wholly independent of each other, that which is constitutional may stand, while that which is unconstitutional will be rejected; but, as was said in Poindexter v. Greenhow, 114 U. S. 305: "'These are cases where the parts are so distinctly separable that each can stand alone, and where the court is able to see and to declare that the intention of the legislature was that the part pronounced valid should be enforceable, even though the other part should fail. To hold otherwise would be to substitute for the law intended by the legislature one they may never have been willing by itself to enact."

In re WONG HANE, 108 Cal. 680.

In answer to query No. 2: For the same reasons hereinbefore stated, my answer to this query is "no". The Board of Supervisors has not the authority to arbitrarily limit the use of property, zoned as commercial, to an automobile parking station, when the general zoning ordinance provides what lines of business may be established in a commercial zone or excluded therefrom.

In answer to query No. 3: For the same reasons, the answer is "no".

In answer to query No. 4: It is my opinion that the language used in Section 2 of Ordinance No. 6871, consists merely of an expression of intention; and regardless of whether or not it consists of an expression of intention, it is nevertheless, void and invalid, for the reason that an attempt is made to do something not permitted by the general zoning scheme ordinance as heretofore pointed out.

In answer to query No. 5: My opinion is, that since Ordinance No. 6871 (New Series) was entirely void and invalid, there is no limitation except that fixed by the original zoning ordinance.

In answer to query No. 6: It is my opinion that the Board of Supervisors arbitrarily attempted or sought to limit the use of the property to certain commercial uses other than an amusement park,

which of course, for the foregoing reasons previously enunciated, cannot be done.

Respectfully,

CITY ATTORNEY.

(81

July 14th, 1926.

SUBJECT: Surgical expenses of Park employe.

Gentlemen:

Your communication of recent date requests my opinion as to the right of the Park Commissioners to pay for a surgical operation to be performed on Rose Abroms McNulty, injured in the performance of her duties as waitress while employed in the restaurant near the Children's Playgrounds of Golden Gate Park.

Some years ago the Park Commissioners decided it was necessary and advisable that such restaurant be maintained for the purpose of the better operation and maintenance of said park, and has since that time been conducting said restaurant under and pursuant to the provision of Section 6, Article XIV of the charter of the City and County of San Francisco.

OPINION.

The so-called Workmen's Compensation Act of the State of California places the burden upon employers of compensating employees for injuries occurring in the course and growing out of their employment, and "compensation" has been held to include medical, surgical and hospital expenses.

I understand the Park Commissioners have a compensation insurance policy but that said policy excludes medical, surgical and hospital treatment for the reason that such treatment has heretofore been provided by the City and County Hospital, but in this instance the operation is one which seemingly is necessary to be performed by a specialist not in the services of the City and County Hospital.

It is my opinion that the Park Commissioners must compensate Rose Abroms McNulty for the injuries sustained by her and that this compensation include the necessary surgical operation, and if the City and County Hospital cannot provide such services it is the duty of the Park Commissioners to provide for such operation out of its funds devoted to the

(2)

July 31st, 1939.

Subject: Proposed extension of
Main Highway.

Gentlemen:

Your communication of recent date requesting my opinion as to the right of the Main Contracting Co. [illegible] for a capital expenditure to Nine Lights Heights, Inverel to Bee [illegible] at Inverell [illegible] welcome while employed in the construction [illegible] Inglewood at [illegible] date [illegible].

Some years ago the Deep Creek [illegible] was necessary and advisable that work [illegible] taken for the greater [illegible] of rail [illegible], and [illegible] [illegible] [illegible]

operation of said restaurant. However, if this operation can be performed at the City and County Hospital such course should be pursued.

Yours respectfully,

CITY ATTORNEY.

Park Commissioners.

(82)

July 15th, 1926.

SUBJECT: Zoning law with reference to restoration of building destroyed by fire or other causes.

Dear Sirs:

REQUEST.

Your request for an opinion concerning whether or not a building destroyed by fire or other causes could be reconstructed in a particular zone, where the building is a non-conforming use, is at hand.

OPINION.

Section 17 of Ordinance 5464 (New Series) provides that a building may be restored in whole or in part when it has been destroyed or damaged by fire, earthquake, explosion, act of God, or act of a public enemy. It is my opinion that Section 17 is not affected by Section 9 with respect to buildings wholly or partly destroyed by fire, earthquake, etc. Section 9 has no applicability to Section 17 so far as the whole or partial destruction of a building by the causes hereinbefore mentioned is concerned.

Respectfully,

CITY ATTORNEY.

City Planning Commission.

(83)

July 19th, 1926.

SUBJECT: Use of Street for Fire Engine House.

Dear Sir:

Your request for an opinion regarding whether or not a fire engine house can be erected on a parcel of land located at the intersection of Geary Street and Point Lobos Avenue, and between Forty-first Avenue and Forty-second Avenue, is at hand. In your letter containing the request, dated July 15th, 1926, it appears that this parcel of land is officially a part of Geary Street.

OPINION.

The owner of property fronting on a public street usually holds his title in fee simple to the center of the street. Section 831 of the Civil Code provides:

> "An owner of land bounded by a road or street is presumed to own to the center of the way, but the contrary may be shown."

Where a public street or highway is made a boundary of land, the owner is presumed to own to the center of the street or highway, and a transfer of land bounded thereby passes the title of the person whose estate is transferred to the soil of the highway in front of the center thereof, unless a different intent appears from the grant.

MERCHANT vs. GRANT, 26 Cal. App. 485.

A public highway is a mere easement, and the owner of the soil over which it passes has an action of trespass against any person who interferes with it for any purpose but to use or repair it.

PORTER vs. CITY OF LOS ANGELES, 182 Cal. 515.

As a general rule the fee of the streets in a city, dedicated to public use, is in the owners of the adjoining land, on each side to the center of the street.

SAN FRANCISCO vs. SPRING VALLEY WATER CO.,
48 Cal. 493.

In SPIRES vs. CITY OF LOS ANGELES, 150 Cal. 64, at page 67, in connection with a case where a park was dedicated to public use, the court said:

> "Of course, if a municipality were undertaking to establish on this property a city hall, fire engine station, hospital, or jail; endeavoring to devote the property (assuming it was dedicated for a public park) to the erection of municipal buildings or offices or structures for use in the transaction of municipal business, a different question would be presented, and there would be little hesitancy in holding that it could not do so."

> "Property dedicated becomes public property, impressed with the use for which it was dedicated, and the public cannot divert it from that use, at least, without the consent of the dedicator or his successors in interest. A dedication made by a private individual for a specific public use, is to be strictly construed as to the use intended."

9 CAL. JURIS. P. 80.

> "And when the public use to which land is dedicated ceases, the dedication is at an end, and the land reverts to the owner."

9 CAL. JURIS. P. 83.

It therefore appears that when land is dedicated to public use as a street, that it can be used for no other purpose, and particularly, as indicated in SPIRES vs. CITY OF LOS ANGELES (supra), it cannot be used for a fire engine house.

It is therefore my opinion that the only way in which this property can be used for a fire engine house is by closing it as a street and purchasing the rights of all of the

persons having any interest in and to the land to be used. This would necessarily mean that proceedings according to Article VI, Chapter III of the Charter, dealing with the closing of public streets, would have to be followed.

Respectfully yours,

CITY ATTORNEY.

Board of Public Works,
Right of Way Agent.

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July 22nd, 1926.

Aerial Affairs Committee,
San Francisco Chamber of Commerce,
Merchants Exchange Bldg.,
465 California St.,
San Francisco, Calif.

Gentlemen:

Your letter of June 29th, 1926, concerning the question of whether or not the City and County of San Francisco is permitted to spend money for the purchase of an Airport site outside the limits of the City and County without an amendment to the Charter authorizing such, is at hand.

Article V, Chapter II, Section 2 of the City Charter provides that the City Attorney shall give legal advice, in writing, to all officers, boards and commissions named in the Charter, when requested so to do by them. The Charter does not provide that opinions shall be given to anyone except the officers, boards and commissions named in it. However, the policy of this office is to assist anyone interested in public affairs as much as is possible, and with this thought in mind, although I am unable to render you an official opinion, I am pleased to answer your letter and render to you an unofficial opinion.

The Charter of the City and County of San Francisco does not give the municapility in express terms the right to establish an Airport outside of this City and County and to purchase real property for this purpose. However, in the light of Sections 1 and 2 of Chapter 715- Statutes of California, approved May 1st, 1911, I am constrained to believe that were I to render an official opinion I would hold that if an Airport site were purchased and an Airport established for the use of air lines from city to city and from town to town and this Airport were to be used as a terminal for these air lines, the establishment of such a terminal would be the creation of a public utility and that, therefore, the City and County of San Francisco could purchase land and operate such a terminal. It would in effect be no different than a railroad terminal where the lines of different roads terminate. However, if this terminal were used by private persons who were not operating air lines, such an Airport could not be established and land could not

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be purchased for it by this municipality for the reason that the City and County has not the implied power to purchase land and establish an Airport outside of its limits for a private purpose. It would then, of course, be necessary to amend the Charter giving this City and County express powers to purchase such a site and establish an Airport thereon.

Several years ago a question arose regarding the establishment of a tuberculosis sanatorium by the City and County of San Francisco outside of its limits and the purchase of land for this purpose. The Superior Court held that this could not be done. The City and County of San Francisco filed notice of appeal to the Supreme Court but prior to the time that the case was heard the people of San Francisco saw fit to amend the Charter permitting and allowing the City the express right to purchase land for this purpose. The appeal was then abandoned. In this latter instance there were more reasons for holding that the City and County of San Francisco had the right to purchase land and establish such an institution than there are now for the establishment of an Airport, since a tuberculosis sanatorium would come within the rule that the health of the people in the municipality would be better, so I am inclined to believe that in order for this City and County to purchase land and establish an Airport site outside of the limits of the municipality it would either have to come within the statute heretofore mentioned or the Charter would have to be amended giving it express authority to make the purchase and establish the site.

I trust that this information will be of value to you.

Yours very truly,

CITY ATTORNEY.

84

July 22nd, 1926.

SUBJECT: Evidence necessary to prove abandonment of a child.

Dear Sir:

REQUEST.

Your letter of July 1, 1926, requesting an opinion concerning what evidence the Board of Control might demand of the fact that a child has been abandoned, is at hand.

OPINION.

Section 2283 of the Political Code provides in part:

> "But each abandoned child maintained by an institution must have been an inmate thereof for one year prior to such institution receiving aid therefor, as provided in this chapter; provided, however, that upon receiving such aid such institution shall also be entitled to reimbursement from the state for said year in a sum not in excess of one hundred twenty dollars per annum for each such abandoned child where proof of abandonment sufficient to demonstrate the genuineness of the claim is presented to the state board of control;"

The intent of the foregoing code section appears to be that the Board of Control must be satisfied of the fact that the claim is genuine before it will be sanctioned by the Board.

It is my opinion, in view of the foregoing Political Code section, that the Board of Control has the right to demand a court order before they consider a child to be legally abandoned. This is simply a protective measure on the part of the Board. A court order protects the Board in every way. Any other evidence, although it may be good in itself, might not be sufficient. If the Board of Control were compelled to hear every case and receive evidence concerning an abandoned child they would place themselves in the category of a court. This would be wrong in principle. It may readily be seen that the Board of Control would not be fully protected unless it received an order of court declaring the child

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July 22nd, 1938.

SUBJECT: Reasons necessary to prove Abandonment of a Child.

Dear Sir:

RESULT.

Your letter of July 5, 1938, requesting an opinion concerning what evidence the Board of Control might demand if the fact that a child has been abandoned, is at issue.

DISCUSSION

Section 1702 of the Criminal Code provides in part:

"Any such abandonment shall be considered by an institution duly empowered to license child-caring institutions and duly licensed by the State Board of Control, as sufficient reason for refusing to renew the license of any institution in which such abandoned child shall thereafter, be received, kept or cared for, unless such institution shall furnish proof of abandonment satisfactory to the Department of the State Board of Control."

The intent of the foregoing code section is to show the Board of Control what to require before it will be convinced by the Board.

It is my opinion, in view of the foregoing statutory code section that the Board of Control has the right to demand a court order before they consider a child to be legally abandoned. This is simply a protective measure on the part of the Board. A court order protects the Board in every way, any other evidence, although it may be good in itself, might not be sufficient. If the Board of Control were dissatisfied by their every move and receive evidence concerning an abandoned child they could place themselves in the ridiculous position. This would be wrong in principle. It may happen that the Board of Control would not be willing to legally declare a child abandoned unless it received an order of court declaring the child

legally abandoned. It does not appear that there is anything unreasonable about this.

Respectfully,

CITY ATTORNEY.

Auditor.

July 23rd, 1926.

SUBJECT: Contract with Street Cabinet Company.

Dear Sirs:

Referring to the inquiries contained in your Resolution No. 91089 (Second Series), in which you ask if the proposed agreement between the Street Cabinet Company and the City and County of San Francisco, may be entered into, and second, does the contract offer make bidding unnecessary.

OPINION.

In answer to question No. 1, as these receptacles or cans are to be placed on the sidewalks of the City, and on which advertisements are to be painted, you are advised that in view of Ordinance No. 80, and particularly subdivision 4 thereof, which reads as follows:

> "It shall be unlawful for any person, association or corporation to stencil, paint or paste any kind of advertising matter on the streets, gutterways or sidewalks, or on any obstruction placed upon the streets or the sidewalks of the City and County of San Francisco."

it is my opinion that the entering into the suggested contract is inhibited by the ordinance above cited. In view of the foregoing, it is unnecessary to answer your second query.

Respectfully,

CITY ATTORNEY.

Board of Public Works.

July 28th, 1926.

SUBJECT: Ordinance Regulating
Public Laundries.

Dear Sirs:

REQUEST.

Your request for an opinion regarding the validity of the amendment to Section 1 of Ordinance No. 3300 (New Series), regulating the establishment and maintenance of public laundries, is at hand.

OPINION.

The business of conducting a public laundry is a lawful occupation, but a municipal corporation has the power to regulate laundries for the benefit of the public health and welfare of the people.

See: Ex parte Sing Lee, 96 Cal. 354.

The ordinance as submitted, in my opinion, is valid.

Respectfully,

CITY ATTORNEY.

Board of Supervisors.

August 4th, 1926.

SUBJECT: Responsibility of the City and County of San Francisco for support of resident indigents who have property or estate outside of California.

Dear Sirs:

REQUEST.

Your request for an opinion dated July 22, 1926, regarding the rights of the Defazzio children, who are residents of San Francisco and who are beneficiaries under a trust in the state of Pennsylvania, to receive aid from the City and County of San Francisco, is at hand.

OPINION.

From a reading of the request it appears that the trust estate consists of about $6000.00 in cash, and is in the custody of the Pennsylvania Trust Company of Pennsylvania. It further appears that by an order of the Orphans' Court of Allegheny County, Pennsylvania, the mother of the four Defazzio children was awarded the sum of $5.00 each monthly for their support. Ordinarily when a trust is created the beneficiaries of the trust receive only what the creator of the trust desired or intended them to receive, so that if, in this instance, it was provided by the trust agreement, or otherwise, that these children should receive only interest or dividends from stock under the trust, no court would, or could give them anything more than that. It may be possible that such is the situation here, since the court made an order awarding Mrs. Defazzio so little as the sum of $5.00 for the support of each of the children. At any rate, the Juvenile Court of the City and County of San Francisco has no jurisdiction beyond the confines of the State of California.

Therefore, it is my opinion that in view of Section 11 of the Juvenile Court Law, the City and County of San Francisco is bound to support these children if they are properly found to come within the purport of the act.

August 15th, 1914.

Subject: Responsibility of the city and County of San Francisco for Supply of Medical Facilities to Persons who have property or rights subject of Litigation.

Dear Sirs:

[illegible]

[illegible]

[illegible]

Unfortunately the Juvenile Court Law does not appear to provide any remedy for the City and County of San Francisco in a case where children have an estate outside of the borders of the State of California. It would appear that it would not be reasonable to attempt to transport this family to Pittsburgh, Pennsylvania, simply because of the fact that there might be a possible means of supporting them there.

Section 11 of the Juvenile Court Law provides that the City and County of San Francisco should be reimbursed for any expenses of support and maintenance from the earnings, property or estate of a ward. An order of a court of this state, of course, is not enforceable by any officer outside of California.

It appears also from your request that an ordinance was recently passed by the County of Los Angeles in which this question was disposed of. I am of the opinion that this could not be done in this City and County for the reason that we are guided by the Juvenile Court Law of the state. It is evident that the County of Los Angeles has a charter provision giving the county authority to pass ordinances relating to indigents, neglected children, etc. I have been unable to find such a provision in our charter. Since this is the case we could pass no ordinance which would be effective to take care of a situation like this.

The injustice of a remedy suggested wherein the mother of the children might be transported to Pittsburgh with her brood would be very apparent in a case where the children might never have been outside of the State of California and might have been natives here. It would certainly be legally wrong, and morally so, in that event, to transport them from their home to a foreign place merely because of the fact that they had an estate elsewhere. Of course it might be pointed out that it would also be unjust to the people of this City and County to be compelled to support children who might have a large estate outside of California, but since there is no provision in our law taking care of a situation like this I am of the opinion that the City and County of San Francisco is without a remedy and must continue to support these children.

Respectfully,

CITY ATTORNEY.

Office of Probation Officer.

(1087)

Aug. 9th, 1926.

SUBJECT: In re Refund of Taxes to Richard Barker.

Dear Sirs:

I am in receipt of your letter under date of August 6th, relative to refund of taxes paid under protest by Richard Barker on April 17th, 1925.

OPINION.

Section 3819 of the Political Code provides for the refund of taxes paid under protest. This section further provides that any action brought by the taxpayer must be commenced within six months from the date of payment.

You are therefore advised that the claim made by Mr. Barker is barred by the statute of limitations, and cannot now be paid.

I herewith return you Mr. Barker's letter, together with his protest against the tax.

Sincerely yours,

CITY ATTORNEY.

Finance Committee
Board of Supervisors.

August 20th, 1926.

SUBJECT: Airport Site may be established Outside of San Francisco.

Dear Sirs:

Your request for an opinion concerning the question of whether or not the City and County of San Francisco is permitted to spend money for the purchase of an airport site outside the limits of the City and County without an amendment to the City Charter authorizing it, is at hand.

OPINION.

No direct authority is found in the Charter of the City and County giving to the Board of Supervisors or to the City the right to acquire property outside of the limits of the municipality for the purposes mentioned, and therefore we must look to the general laws of the State for such authority, if it does exist. Courts of the various jurisdictions are not entirely in accord in their decisions on the subject.

The Superior Court of the City and County of San Francisco some years ago, when the question of acquiring a site outside of the limits of San Francisco for a tubercular hospital arose, decided that the Board of Supervisors had not the authority to purchase the site. This case was not appealed from, but the Charter was amended giving such authority to the Board.

The Supreme Court of this State in the case of MULVILLE vs. CITY OF SAN DIEGO, 183 Cal. 734-37, gives expression to the following:

> "In general, a municipality is competent to act beyond its boundaries only in those cases in which it is so empowered by legislative authority, and it is necessary, in passing upon the validity of acts of a municipality performed beyond its boundaries, to look to the general laws and municipal charter for the requisite authority."

As I have said, in the instant case the charter is silent on the subject, and it is well settled that a municipality

August 15th, 1888.

Subject: Affairs into and in relation
Outside of the Theatre.

Dear Sirs:

Your request for an opinion concerning the opening
of theatre or not for the 4th August at 8pm (Operation is specified
to operate solely for the evening of the subject site existing the
Theatre, at the 4th August) without an indemnity to the City
Theatre prohibiting it, is at hand.

Opinion.

The direct authority in Order as the Charter of the
City and County to the Board of Supervisors to do the City
the power to acquire theatre property of this kind of the
municipality for the purpose including, but therefore at least
legs to the general laws of the State for such authority, if it
does exist. Courts of the several jurisdictional are not entirely
in accord in their decisions on the subject.

The Supreme Court of the City and County of San
Francisco some years ago, under the question of municipal rights
relative to the City of San Francisco for a theatrical purpose
arose. Instead that the Board of Supervisors had not authority
to purchase the site. That case was not appealed from, but the
Charter was amended giving such authority to the Board.

The Supreme Court of the State in the case of
Merriam vs. City of San Diego, 104 Cal. 594, plus expresses
the same intention:

"In general, municipality is restricted to all
powers its constitutes only in those cases in which
it is so empowered by legislative authority, and it
is necessary, in deciding upon the validity of acts
of a municipality performed beyond its charter,
to look to the general laws and municipal charter
for the requisite authority.

In 7 Cyc. 802, in the Digest from the Supreme is
silent on the subject, and it is well settled that a municipality

is subject to the general laws of the state as to municipal affairs which are not made the subject of charter legislation.

See CLOUSE vs. CITY OF SAN DIEGO, 159 Cal. 437.
CIVIC CENTER ASSOC. vs. RAILROAD COMMISSION, 175 Cal.441.
CITY OF SACRAMENTO vs. ADAMS, 171 Cal. 458.

It is therefore incumbent upon us to turn to the general laws of the State for the desired authority.

Your attention is directed to the Act of the Legislature approved May 1st, 1911, and found in Chapter 715 of the Statutes of that year. Sections 1 and 2 are pertinent to the inquiry in the instant case. They are as follows:

"Sec. 1. Any municipal corporation of the State of California may acquire, construct, own, operate or lease any public utility. A public utility, as the term is used herein, is defined to mean the supply of a municipal corporation alone, or together with the inhabitants thereof, or any portion thereof, with water, light, heat, power, transportation of persons or property, means of communication, or promoting the convenience of the public. The power to acquire and operate any public utility shall include the power to complete, reconstruct, extend, change, enlarge and repair any such public utility acquired, constructed, owned or operated by a municipality.

Sec. 2. For such purpose any such municipal corporation may acquire, own, control, sell or exchange lands, easements, licenses and rights of every nature within or without its municipal limits, and may operate any such public utility within or without the municipal limits when necessary to supply such municipality, or the inhabitants, or any portion thereof, with the service desired."

I am of the opinion that the definition of a public utility as set forth in Section 1 is sufficiently broad to cover an airport, and would come within "transportation of persons or property, means of communication, or promoting the convenience of the public". Provided, of course, it was used as a terminal for air lines engaged in carrying passengers or property to or from San Francisco. Should however, it be used merely as a matter of convenience to persons operating planes for their individual pleasure, and not transporting

is subject to the general laws of the state as to municipal affairs which are not made the subject of express legislation.

See COLBERT vs. CITY OF OAK CLIFF, 139 Tex. 427.
CITY OF CORPUS CHRISTI vs. BATCHELL CONSTRUCTION, 139 Tex.465.
CITY OF TARLETON vs. ADAMS, 113 Tex. 498.

It is therefore incumbent upon us to turn to the general laws of the State for the desired guidance in

Our attention is directed to the act of the Legislature appearing as Art. 1433, and found in Chapter 11b of the Statutes of this year. Sections 1 and 2 are pertinent to the inquiry in the instant case. They are as follows:

"Sec. 1. Any municipal corporation of the State of Texas may acquire, construct, own, operate or lease any public utility. A public utility, as the term is used herein, is defined to mean its ownership of a municipal corporation alone, or together with the inhabitants thereof, or any portion thereof, with water, light, heat, power, transportation of persons or property, means of communication, or transporting the commodities of the public. The power to acquire and operate any public utility shall include the power to condemn, purchase, acquire, occupy and use any such public utility acquired, constructed, owned or operated by a municipality.

"Sec. 2. The said powers may be exercised anywhere that may be within, over, without, and to adjacent lands, easements, lines and rights of every nature within or without its municipal limits, and any courts may grant public utility within or without the municipal limits when necessary to supply such municipality, or the inhabitants, or any portion thereof, with the service desired."

I am of the opinion that the ownership of a public utility as set forth in Section 1 is sufficiently broad to cover and include, not merely the "transportation of persons or property, means of communication, or transporting the commodities of the public". Provided, of course, it was used as a function for the direct benefit of the municipality or property in or from the territory. There is nothing, however, in the act to authorize a municipality to operate a public utility for the benefit of persons in general, or for operating the service at certain places for their individual pleasure, and not primarily

persons or property, I would have some doubt as to whether or not it would come within the definition of public utility used in the statute.

Therefore, I am of the opinion that under the general laws of the State the Board of Supervisors has the power to expend money for a site outside the City to be used as an airport, provided the site shall be used in such a manner that it will be a public utility.

You are further advised that in the acquisition of this site, the operation thereof, and the expenditure of the money therefor, your Board will be bound by the charter provisions regarding public utilities, in so far as the same are applicable to the matter in hand. To handle the matter in any other way would require a charter amendment.

Respectfully yours,

CITY ATTORNEY.

Board of Supervisors.

COPY

CITY ATTORNEY
San Francisco

89½E

August 24th, 1926

Hon. Edw. F. Bryant,
Tax Collector,
City Hall,
San Francisco, Calif. Attn. Mr. John Lenahan

Dear Sir:

In answer to your queries, concerning the collection of the license tax imposed against the Southern Pacific Company as owners of the Richmond and Oakland Mole Vehicular Ferries which were, are the payments of the license tax to be made in advance and are they due from the date the franchise is granted, or the date of operation?

The language of Ordinance 5990, imposing the license tax, is as follows:

" * * * the sum of One Hundred ($100.00) Dollars per month payable yearly."

As you are aware, all tax statutes or ordinances must be strictly construed, and the words "payable yearly" may be properly construed as meaning payment within the year that the tax is due.

Your first query is therefore answered in the negative and payment of the license tax need not be made in advance.

Your second query must also be answered in the negative, as under Section 2845 of the Political Code, Subdivision 2, it is provided that the Board of Supervisors before granting a franchise to construct a toll bridge or keep a public ferry shall fix the amount of tax to be paid "for taking tolls thereon".

As we are again confronted with a strict construction of a tax law we must construe this language as meaning that no tax is to accrue until there shall actually be a taking of tolls upon the utility, and therefore the Southern Pacific Company is not required to pay the license tax except from the date of operation.

Yours very truly,

JOHN J. O'TOOLE, City Attorney

By (Dion R. Holm)
Chief Deputy City Attorney

XXX

Hon. Chr. J. Bryant,
Tax Collector,
City Hall,
San Prendiano, Calif.

Attn. Mr. Jim Lowden

Dear Sir:

In answer to your queries, concerning the collection of the license tax imposed against the Pacific Traffic Company as owners of the Diamond and Velvet Tula Interior Trolley which are the property of the license tax to be made in advance and are they due from the date the franchise is granted, or the date of operation?

The language of Ordinance 5100, imposing the license tax, is as follows:

"...the sum of One Dollar ($1.00) Dollars per month payable yearly."

In your first query is therefore answered in the negative and payment of the license tax must not be made in advance.

Your second query must also be answered in the negative, as under Section 4 of the Municipal Code, Article 3, it is provided that the Board of Supervisors before granting a franchise to construct a toll bridge or keep a public ferry shall fix the amount of tax to be paid "for having said franchise".

It is not quite understood with a view to construction of a tax law as must exercise this language to mean that no tax is to accrue until there shall actually be a taking of tolls upon the utility, and therefore the Interior Pacific Company is not required to pay the license tax except from the date of operation.

Yours very truly,

John S. Wilson, City Attorney

By John F. Neal

Chief Deputy City Attorney

(90)

September 3, 1926.

SUBJECT: Power of Board of Supervisors to Limit Weight of Motor Vehicles or Speed of Loaded Vehicles.

Gentlemen:

I am in receipt of your request for an opinion dated August 28, 1926, as follows:

> "The Traffic Committee of the Board of Supervisors desires to be advised as to the extent of the power of the Board to limit the weight of motor vehicles, or to limit the speed of loaded vehicles on the public streets. May a less weight or speed than that prescribed by state law be fixed by ordinance?"

OPINION.

Section 88 of the Motor Vehicle Act of the State of California, Statutes 1923, p. 517, provides as follows:

> "The legislative body of any county or city shall have power by ordinance to permit the operation and moving of vehicles and loads upon public highways and streets under their respective jurisdictions other than upon state highways of a maximum gross weight of vehicles and loads specified in section eighty-five of this act but shall have no power to require lighter loads than specified in this act on any improved public highway as such highway is defined herein, except as in this section otherwise provided."

It appears that the speed limit of loaded vehicles is regulated by the Motor Vehicle Act in Section 118 thereof.

In Ex parte Daniels, 183 Cal. 636, the Court held that the state law is paramount to a municipal ordinance in matters other than those dealing with municipal affairs. In this case it was held that the operation of motor vehicles on public highways is not a municipal affair, hence the state law must govern. There are numerous other cases which follow the reasoning of the Daniels case.

In Whyte vs. City of Sacramento, 65 Cal. App. 534, at page 553, the court, in effect, by way of dictum, held that the Motor Vehicle Act of 1923, which is still in full force and effect, repealed any municipal ordinances dealing with the weight of motor vehicles, inasmuch as the state law governed.

When the general state law has dealt comprehensively with the subject matter of a municipal ordinance, the general law is dominant and controlling, and the ordinance is invalid and unenforcible in the absence of specific authority conferred by the Legislature. (Constanzo vs. Robinson, 104 S. E. 473).

It is my opinion, therefore, that the Board of Supervisors is powerless to limit the weight of motor vehicles, or to limit the speed of loaded vehicles on the public streets.

Respectfully,

CITY ATTORNEY.

TRAFFIC COMMITTEE,
BOARD OF SUPERVISORS.

(91

September 10th, 1926.

SUBJECT: In re Embarcadero Buses.

Dear Sirs:

I have before me your letter in re above entitled matter, enclosing resolutions from Board of Public Works, reading as follows:

Resolution No. 92782(Second Series) Adopted July 21,1926.

"Resolved that the Board of Supervisors be, and is hereby requested to rescind that portion of Ordinance No. 6723 authorizing this Board to advertise for bids and enter into contracts for furnishing motor busses and equipment for motor bus service on The Embarcadero, in order to allow for the purchase of said busses in the open market under the provisions of Ordinance No. 6440."

Resolution No. 92783(Second Series) Adopted July 21,1926.

"Resolved, that this Board recommend that the Board of Supervisors request the Board of Harbor Commissioners to so amend the existing agreement in connection with the purchase of buses for motor bus service on The Embarcadero, as to permit of the purchase of twenty-nine (29) passenger, four or six-cylinder buses made in California."

You ask that you be advised if the requests contained in said resolutions can be complied with, and also that I ascertain if the State Board of Harbor Commissioners will consent to the suggested changes.

OPINION.

In regard to the first resolution above set forth, I will state that on May 29th last I advised your Committee, that the award of contract made by the Board of Public Works under authority of Ordinance No. 6723, theretofore adopted by the Board of Supervisors, was illegal for the reasons stated in that opinion. You are therefore advised that if the Board of Public Works is

desirous of purchasing buses in the open market, it may do so under the provisions of Ordinance 6440. Your attention is however, directed to Sub. 8, Sec. 9, Art. VI, Chap. I of the Charter, which gives to the Board of Public Works the right to contract for materials or equipment necessary for the construction, maintenance or operation of any public utility, wherever such materials, or equipment are certified by the City Engineer to be necessary therefor. You are therefore advised that before the particular equipment mentioned in the resolution can be purchased, it must be certified to be necessary by the City Engineer.

In regard to the second resolution above quoted, I will state that I presented the request contained in the resolution to the Board of State Harbor Commissioners, and in reply I am in receipt of the following communication from Mr. William T. Plunkett, its attorney:

"September 7, 1926.

Honorable John J. O'Toole,
City Attorney,
City Hall,
San Francisco, Cal.

Dear Sir:

In re Embarcadero Bus Line.

The Harbor Board has turned over to me for reply your favor of the 2nd instant.

In answer thereto, the Board requests that I advise you that it has full confidence in the City Engineer, Mr. O'Shaughnessy, and that any arrangements that Mr. O'Shaughnessy may make regarding buses or the operation thereof will be agreeable to the Board. Thanking you for your courtesies herein, I am,

Very truly yours,

W. T. Plunkett."

It would appear from this letter that the Board of Harbor Commissioners will consent to the modification of their contract with the City, provided that the modification of equipment is approved by the City Engineer.

Respectfully yours,

Public Utilities Committee
Board of Supervisors.

CITY ATTORNEY.

Sept. 14th, 1926.

SUBJECT: Refund of License Tax paid in advance where licensee dies. (Dr. W. F. McNutt matter).

Gentlemen:

I am in receipt of your communication of the first instant, as follows:

"By direction of the Finance Committee is referred to you the attached Voucher and Demand from the Tax Collector (No. 228), refunding to the estate of W. F. McNutt, the sum of $12., being the amount paid for a Doctor's license July 31, 1926; Dr. McNutt having died."

OPINION.

There is no provision in the "License Ordinance", No. 5132 (N.S.), or in the state statutes authorizing the return of moneys so paid. The only medium of refund would be a case founded upon a payment made under what is legally reducible to an involuntary action by the payor superinduced by the collecting agency.

In "Opinions of the City Attorney, 1910-11-12", at page 407, former City Attorney, Percy V. Long, reviews the law upon the subject of refund of payments made under illegal license ordinances, therein discussing the cases of Maxwell vs. San Luis Obispo, 71 Cal. 466; and Wheeler vs. Ridenour, 149 Cal. 782, and concludes that payments effected by the threat of arrest or civil suit does not render the action involuntary, and that taxes thus collected cannot be refunded without an authority providing for such procedure.

In your proposition, the question of voluntary action is not involved, but only a payment in advance, and so, a fortiori, the same conclusion of refusal of refund obtains.

Thus, I am of the opinion that the warrant providing for refund be not approved.

Respectfully,

CITY ATTORNEY.

Board of Supervisors.

(23

Sept. 21st, 1926.

SUBJECT: Right of Temporary Employee to come within Retirement System; Right of Employee to be credited with prior service.

Gentlemen:

Your request, dated September 15th, 1926, for an opinion concerning whether or not Henry M. Burnet, a temporary employee of the City and County of San Francisco, is entitled to the minimum retirement allowance, was received in due course.

OPINION.

It appears from the facts set out in your request for an opinion together with other data submitted by you to me, that Mr. Burnet was an instrument maker employed by the Department of Electricity. From the facts of the matter it appears that Mr. Burnet was employed at various times from April 1st, 1906, to and including his recent period of employment, which said recent period covered three years. Owing to the nature of the work it seems that Mr. Burnet did not have steady and constant employment. I have made an examination of the records in the office of the Civil Service Commission, and it appears therefrom that Mr. Burnet was rated as a temporary employee, and was in actual fact a temporary employee.

I refer you to Ordinance No. 5561 (New Series), Section 4, Subdivision "b", paragraph 4. You will note that the ordinance provides that certain employees shall not become members of the Retirement System. Paragraph 4 provides that employees certified from Civil Service lists for temporary employment shall not become members of the retirement system. If Mr. Burnet was a temporary employee prior to the last time he went into the service of the City, he is certainly not entitled to credit for prior service rendered, since the Ordinance expressly exempts employees of his classification from membership in the Retirement System.

By referring to Section 6 of the same ordinance, you will note that there is a provision as follows:

"The Board of Administration shall issue a prior service certificate to each member entering

the Retirement System on April first, nineteen hundred and twenty-two, and to each member entering the Retirement System after that date if such entry is within one year after rendering city-service prior to April first, nineteen hundred and twenty-two, and shall certify thereon service rendered prior to the first day of April, nineteen hundred and twenty-two;"

From the reading of this paragraph, coupled with an examination of Subdivision "h", Section 2, of the same Ordinance, it would appear that Mr. Burnet is entitled to no allowance for service rendered prior to July 1st, 1923.

Therefore, I am of the opinion that credit for prior service cannot be legally granted to Mr. Burnet.

Respectfully,

CITY ATTORNEY.

Board of Administration,
San Francisco City Employees' Retirement System.

September 23,1926.

SUBJECT: Board of Education is Liable for an Accident due to its Negligence or the negligence of one of its Employees.

Members:-

Your request for an opinion dated September 7th was received by me in due course. It appears that Ellen Schunk suffered injuries to her head while she was standing in her place in line at school as the result of a basketball back-stop having become loosened and having fallen upon her from its fastenings. It further appears that this back-stop was used for basketball purposes and in addition was frequently used by students in the school for the purpose of getting a better view of games during practice. The students were evidently permitted by the teachers and others in charge to sit upon this back-stop on many occasions. Unquestionably this was the cause of the weakening of the back-stop so that it fell from its fastenings. The back-stop was never intended for any other purpose than to serve in basketball games.

OPINION.

The general rule in this country is that a school district, municipal corporation or school board is not, in the absence of a statute imposing it, subject to liability for injuries to pupils of public schools suffered in connection with their attendance thereat. In California we have a statute expressly imposing a liability upon boards of education when an accident arises because of the negligence of its officers or employees.

Section 1623 of the Political Code of the State of California provides as follows:

> "Boards of school trustees, high school boards, junior college boards and boards of education are liable as such in the name of the district for salary due any teacher on contract, and for all debts contracted under the provisions of this chapter, and for any judgment against the district on account of injury to any pupil arising because of the negligence of the district or its officers or employees and they must pay any judgment for debts, liabilities or damages out of the school funds to the credit of such district, subject to the limitations of the state of California; provided, that the contracts mentioned in this section shall not be made in excess of the school moneys accruing to the district and usable for the purposes of such contracts during the school

year for which the contracts are made, otherwise the district shall not be held liable.

The district attorney of the county in which a school district is located shall without fee or other charge defend the district in any suit brought for injury to any pupil for any cause. In case suit is brought against the members of the board of school trustees or board of education as individuals for any act or omission in the line of official duty as trustee or board member, it shall be the duty of the district attorney of the county to defend the members of such board of school trustees or board of education without fee or other charge.

Members of the boards of school trustees and city boards of education shall not be held personally liable for accidents to children going to or returning from school or on the play-grounds or in connection with school work."

From the facts of this case as presented to me there was unquestionably negligence and carelessness on the part of those in charge in permitting children to sit on this basketball back-stop thereby weakening it.

The California law with respect to negligence due to the falling of objects is well expressed in 19 Cal. Juris 716 as follows:

"The mere fact unexplained that an object fell from the roof of a building upon one below does not of itself raise an inference of negligence, but a prima facie case is made out where a person is injured while walking upon a public thoroughfare, by anything falling upon him which is shown to be under the management of the defendant or his servants, if the accident is such as in the ordinary course of events does not happen when those who have the management use proper care. Thus a prima facie case is made out where a passerby is injured by the dropping of a chisel from the hands of a workman above, or where a trestle used in the construction of a building falls upon a passerby. Similarly, the doctrine is applicable where a fan installed in a theater pulls or drops from its bearings and falls upon a patron, injuring him."

OPINION
OF
CITY ATTORNEY

In view of the fact that it appears that there was negligence here I advise that there is a liability upon your part in this case.

Respectfully,

City Attorney.

BOARD OF EDUCATION.

(95

October 1,1926.

SUBJECT: Failure to Return
Statement of Property.

Dear Sir:-

Your request for an opinion dated September 23,1926, as follows, is at hand:

"I have an estate in Probate where the deceased died on April 19th,1926. Under the law anyone failing to return assessable bonds, stocks and solvent credits, the Assessor is compelled then to assess the same at their full value. In this case the deceased returned no statement in 1926, whatsoever.

The attorney raises the point that the deceased was ill and physically unfit to attend to the filing of the same or to give power of attorney and that the estate is not subject to such assessment. Can I now under Sec. 3627-A 3629assess same at 100% for 1927?

OPINION.

Section 3627 of the Political Code as amended in 1925 provides:

"All taxable property must be assessed at its full cash value,(except that all notes, debentures, shares of capital stock, bonds, solvent credits, and mortgages or deeds of trust, which are taxable to the owner thereof under provisions of the laws of this state other than this section and section three thousand six hundred twenty-seven a of this code, belonging to a taxpayer who, in person, or when absent from the county, by his representative, has complied with the provisions of section three thousand six hundred twenty-nine of this code, shall be assessed at seven per cent of the full cash value thereof, in determining the full cash value of such shares of capital stock there shall be deducted the value of the property in California of the corporation by which such shares of capital stock are issued.) Land and improvements thereon shall be separately assessed. Cultivated and uncultivated land, of the same quality, and similarly situated, shall be assessed at the same value."

[illegible]

[illegible]

[illegible]

From a reading of the foregoing Political Code section it will be seen that the Legislature had in mind, in its passage of this law, that a spirit of liberality should be shown owners of personal property in the taxation thereof. This Code section provides that the property mentioned should be assessed at 7% of its full cash value. However, Section 3627-A of the Political Code was adopted in order that all taxpayers who desired to take advantage of a seven per cent assessment should make a complete return; hence it was provided that they should file an annual statement, as provided by Section 3629 of the Political Code, showing all of the property owned by them. Section 3627-A specifically provides that the seven per cent privilege set forth in Section 3627 of the Political Code should be effective only in the event that the taxpayer complied with the provisions of Section 3627-A and Section 3629. Section 3627-A appears to be mandatory and if no annual statement was filed by the taxpayer during the time required by law, I am of the opinion that the taxpayer should be assessed on the basis of a one hundred per cent valuation.

Respectfully,

City Attorney.

THE ASSESSOR.

96

October 7, 1913.

Gentlemen:-

Responding to your inquiry as to whether it would be legal for the Board of Election Commissioners and the Registrar of Voters to arrange for the use of voting machines and paper ballots to be used concurrently in the same polling place, at the option of the voter, permit me to say that the provisions for the establishment of voting machines is found in Sec. 6 of Art. II of the State Constitution wherein it is provided that the Legislature shall have power to provide for voting by mechanical devices.

In response to the foregoing provisions the Legislature in 1913 by Act 2273, provided for the use of voting machines under certain conditions, some of those being that the mechanical devices should be properly approved and that sample ballots correctly containing the candidates names, as those names appeared on the voting machine in question, should be sent the voters prior to the time of election.

While there is nothing in Act 2273 which contemplates dual voting, that is to say by mechanical devices and paper ballots, there is no prohibition therein against such a course, but I must call your attention to the fact that said Act provides that those election officers only shall be allowed to handle anything a mechanical device for voting and our election laws call for a voting under where paper ballots are used; that Act also calls for a different kind of sample ballot to be sent voters where mechanical devices are used. Therefore, it is my opinion, that under those circumstances, dual voting at the next election would create a greater confusion than that which is sought to be obviated.

Irrespective of the legality of dual voting, I am informed by Mr. Kennedy that, owing to the shortness of time, such a method at the next election would be impracticable. I am further informed by Mr. Kennedy that the difficulties attendant upon the last election were caused by the large vote cast and by the doubling up of many precincts at the primary election. Mr. Kennedy informs me that precincts will not be doubled up at the next election and that he contemplates having certain voting machines from congested precincts entirely and using paper ballots therein, and this will enable him, with the addition of some voting machines which he now has on hand, to place two voting machines in many of the precincts.

Respectfully,

City Attorney

City Attorney.
Public Service Commissioner.

96

Oct. 13th, 1926.

SUBJECT: Definition of Public Building.

Dear Sirs:

I am in receipt of a copy of a resolution of your Board, wherein you ask to be advised as to whether or not a building proposed to be erected by the Danish Society of San Francisco, and to contain a lodge room and auditorium, both of which would be rented on occasions, comes within the definition of "A Public Building" as that term is used in the zoning ordinance of San Francisco.

OPINION.

The mere fact that the public may occasionally or even at all times have the right to use a building, or to frequent the same with the permission of the owner, does not constitute the building "a public building" as that term is generally understood. Both the courts and law writers have given the term a narrow meaning, limiting it to buildings that are used, owned or controlled by the public.

"A Public Building" is defined in "Cyc" as "A building erected and owned by the state, county or municipal authorities", or "A building owned or controlled and held by the public authorities for a public use".

The Supreme Court of Georgia in Cullum vs. State, 35 S. E. 121, has held that a church was not a public building, stating that a public building was owned, controlled or used by a municipality, county or state.

In view of the foregoing, I am of the opinion that the building in question is not a "Public Building" as that term is used in the zoning ordinance, and you are advised that it cannot be erected in the Second Residential Zone as defined in the ordinance.

Sincerely yours,

CITY ATTORNEY.

To the Board of Public Works.

Oct. 13th, 1926.

SUBJECT: In re Appropriations for Contracts
Wherein a Bonus to Contractor is provided for.

Dear Sirs:

I have before me your letter under date of October 11th, 1926, reading as follows:

"By direction of the Finance Committee is forwarded to you copy of Resolution No. 93012, Second Series, Board of Public Works:

The Committee desires to be informed if this contract can be let eliminating the appropriation for "bonus".

Your opinion is also requested on future contracts - as to the legality and necessity of including appropriations for bonuses.

The Chairman of the Finance Committee calls your attention to the accompanying building specification form in use by the Board of Public Works."

OPINION.

Making answer to your inquiries in the order which they appear in the letter, I will state:

That the Board of Supervisors has the right in authorizing the Board of Public Works to advertise for bids for the equipment of any public utility, to provide whether or not a bonus shall be allowed to the successful bidder for the fulfilling of the contract in a period less than the allotted time, but should the ordinance of the Board of Supervisors fail to forbid the offering of a bonus, and the Board of Public Works in advertising for bids offers a bonus, and the bonus is made a part of the bid accepted, the Board of Public Works has not exceeded its authority and the bonus may be made a part of the contract.

You are further advised that if the contract provides for a bonus, the appropriation to be made by your Board to carry out the contract should include the estimated amount of the bonus. Section 10, Art. III, Chap. I of the Charter provides:

"That no contracts made the expense of whose execution is not provided by law or ordinance to be paid by assessments upon the property benefited, shall be binding or of any force unless the Auditor shall endorse thereon his certificate that there remains unexpended and unapplied, as herein provided, a balance of the appropriation or fund applicable thereto, sufficient to pay the estimated expense of executing the contract."

As the bonus provided for in the contract may become a portion of the cost of executing the contract, it should be included in the estimate, and therefore in the appropriation to be made by the Board of Supervisors.

As to your second question, to wit, the necessity of including an appropriation for a bonus on future contracts, I will state, that if the contract provides for a bonus the appropriation should be made, but a contract may legally provide a stated sum as liquidated damage to be paid by the contractor for failure to complete performance on time, without including a provision for a bonus to the contractor for completing before the specified time.

See NORTHWESTERN TERRA COTTA CO. vs. CALDWELL,

243 Federal Reporter 491.

In this case the court said:

"How can it be claimed that the agreement to pay a possible bonus, for speed within a fixed time for the bonus to cease, throws any light upon an agreement to pay compensation for delay with no time for it to cease? Both sides rely upon this provision in the contract, but we are not able to see, how the agreement to pay a bonus throws any light upon whether another claim is liquidated damages or penalty, where a bonus is no where referred to."

Your attention is however directed to the fact that under the laws of the State of California a provision for liquidated damages for failure to complete a contract on time, can only be inforced where it is practically impossible to determine the amount of damage which the owner has sustained by reason of the failure to complete. The courts of this State have held, that where it is possible to compute the damage, that the con-

tractor will be held liable for the actual amount of damage sustained, irrespective of the amount specified in the contract to be paid as liquidated damages. It is difficult to state in what particular contracts the courts would enforce a stipulation providing for liquidated damages. In all probability, a failure to deliver street cars on time, if the city was ready to use them, would render the contractor liable in the amount specified as liquidated damages, for it would be extremely difficult to determine the exact amount of damage which the City would sustain by the delay. On the other hand, failure to complete a building on time, would in all probability render the contractor liable only for the actual damage sustained, for it would be possible to determine the actual damage sustained. This point will have to be determined by the facts of each particular contract; and no harm can be done to the city by inserting in its contract a provision for liquidated damage for failure to complete on time.

Sincerely yours,

CITY ATTORNEY.

To the Finance Committee
of the Board of Supervisors.

(99

Oct. 22nd, 1926.

SUBJECT: Marginal Transactions.

Dear Sir:

Your recent request for an opinion concerning the question of whether or not a broker is the owner of stock purchased on margin, is at hand.

OPINION.

In answer to the question presented, I refer you to an excerpt from the opinion of Justice Schenk in Blankenhorn-Hunter-Dulin Co. vs. Thayer, 72 Cal. Dec. 91, at page 94, wherein he says:

"Several propositions seem to be well settled: (1) That as between a broker and a customer who has paid for stock in full the latter is the owner of the stock and does not impliedly authorize the broker to pledge the security. As to the fully paid customer the pledging of his stock by the broker is wrongful (In re J. C. Wilson & Co., 252 Fed. 631); (2) That as between a broker and a marginal customer the latter is also the owner of the stock and the broker is a pledgee (Richardson v. Shaw, 209 U. S. 365; Thomas v. Taggart, 209 U. S. 385) and has a lien on the stock for any advances he may make thereon and has the implied consent of the owner lawfully to re-pledge the same (In re J. C. Wilson & Co., supra); (3) That as between the broker and his cash customer the latter is entitled to the immediate delivery of the stock (Duel v. Hollins, 241 U. S. 523) and the marginal customer is entitled to the delivery when he pays the balance of the contract price (In re Mason, 282 Fed. 202)."

From an examination of this portion of the opinion it may be readily seen that the broker is the pledgee of stock purchased on margin, and that the marginal customer is the owner thereof.

Respectfully,

City Attorney.

Assessor.

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October 27, 1926.

Public Utilities Committee,
Board of Supervisors,
City Hall, City.

Dear Sirs:

I am in receipt of your letter of October 7th enclosing a copy of a Resolution introduced in the Board of Supervisors by Supervisors Kent, and referred to your Committee.

The Resolution calls upon your Committee to make an investigation into the methods and manner of the Northwestern Pacific Railway Co.'s conduct of its passenger transportation system insofar as it affects the residents of San Francisco. In your letter you ask as to what jurisdiction your Committee has over the subject matter of the Resolution.

Undoubtedly, it lies within the power of your Committee to investigate any matters which may be referred to you by the Board of Supervisors, but in this particular matter, any conclusion which your Committee might reach after an investigation could have no effect on the conduct of the transportation of passengers by the Northwestern Pacific Railway Company.

The Federal Government has laid down certain regulations regarding the number of passengers that any ferry boat may carry, and if these regulations have been violated it is a matter for investigation by the proper department of the Federal Government.

As to whether or not more adequate facilities of transportation should be furnished by this Company to the residents of San Francisco is a matter which lies within the jurisdiction of the State Railroad Commission.

You are therefore, advised that while you have the right to investigate this matter, should you so desire, the result of your investigations can have no direct bearing upon the conduct of the Company, and can only operate as a recommendation to the proper Federal Department or to the State Railroad Commission to remedy the conditions which are complained of.

Sincerely yours,

CITY ATTORNEY.

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October 18,1916.

Subject: Claims of John J.Tierny.

Dear Sirs:-

I have before me your letter relative to the claims of Mr. John J. Tierny as follows: August,1918 - $325.00; September 1918 - $325.00; October,1918 - $157.25; all for services rendered to the Board of Public Works, after Mr. Tierny had been retired as a Civil Service employee under the provisions of the Retirement system of the City and County. You also refer to me in connection with this matter certain resolutions of the Board of Public Works and certain correspondence had between the Secretary of the Retirement System and Hon. George Lull, my predecessor in office, relative to this matter. All the latter documents are herewith returned to you.

OPINION.

It would appear that Mr. Tierny became a member of the Retirement System on July 1,1922, and that subsequently he was employed under special contract with the Board of Public Works, and presented a demand for $325.00 for the month of July of that year for his services rendered under the contract. Both Mr. Lull and Mr. Sturdevant, special counsel for the Auditor, advised the payment of this demand, upon the grounds that Mr. Tierny was not precluded from receiving pay for services rendered, until after he received his first payment under the Retirement System. Both of these gentlemen,however, advised the Auditor that demands for services rendered subsequent to the first payment could not be allowed, for the reason that Section 14 of the Retirement Ordinance prevented such allowance. The language of the section is as follows:

> "No person who has been relieved from service and receives a retirement allowance under the Retirement System, shall be paid for any service, except as a juror, or as an election officer, rendered by him to the City after the date of the first payment of his retirement allowance."

I agree with Mr. Lull and with Mr. Horan in the construction which they have placed on the sections of the Ordinance, and hence advise you that the demands presented by Mr. Tierny cannot be paid. You are further advised that the demands for the months of August and September,1918, are barred by the Statute of Limitations, and irrespective of the provisions of the ordinance, do not constitute valid claims against the City.

Respectfully,

101

October 28,1926.

SUBJECT: Claims of John J.Tierny.

Dear Sirs:-

I have before me your letter relative to the claims of Mr. John J. Tierny as follows: August,1922 - $[illegible]; September 1922 - $525.00; October,1925 - $157.25; all for services rendered to the Board of Public Works, after Mr. Tierny had been retired as a Civil Service employee under the provisions of the Retirement System of the City and County. You also refer to me in connection with this matter certain resolutions of the Board of Public Works and certain correspondence had between the Secretary of the Retirement System and Hon. George Lull, my predecessor in office, relative to this matter. All the latter documents are herewith returned to you.

OPINION.

It would appear that Mr. Tierny became a member of the Retirement System on July 1,1922, and that subsequently he was employed under special contract with the Board of Public Works, and presented a demand for $525.00 for the month of July of that year for his services rendered under the contract. Both Mr. Lull and Mr. Edwards[illegible]oran, special counsel for the Auditor, advised the payment of this demand, upon the grounds that Mr. Tierny was not precluded from receiving pay for services rendered, until after he received his first payment under the Retirement System. Both of these gentlemen,however, advised the Auditor that demands for services rendered subsequent to the first payment could not be allowed, for the reason that Section 24 of the Retirement Ordinance prevented such allowance. The language of the section is as follows:

> "No person who has been relieved from service and receives a retirement allowance under the Retirement System, shall be paid for any service, except as a juror, or as an election officer, rendered by him to the City after the date of the first payment of his retirement allowance."

I agree with Mr. Lull and with Mr. Foran in the construction which they have placed on the sections of the ordinance, and hence advise you that the demands presented by Mr. Tierny cannot be paid. You are further advised that the demands for the months of August and September,1922, are barred by the Statute of Limitations, and irrespective of the provisions of the ordinance, do not constitute valid claims against the City.

Respectfully,

[illegible]

[illegible]

Nov. 9th, 1926.

SUBJECT: Deposit of Public Moneys.

Dear Sir:

I have your letter of the 6th inst., asking as to whether or not you can accept Los Angeles County Flood Control District Bonds as security for deposits of public money. In your letter you direct my attention to the Act of 1915 authorizing the creation of this particular district, and also the Act of 1923 providing for the deposit of public moneys in banks. I also note the statement contained in your letter as to an opinion rendered by the Attorney General of the State of California advising that bonds of the Flood Control District may be accepted as security for the deposit of public moneys.

OPINION.

Your attention is directed to Section 2, Chapter III, Article IV of the Charter, which provides among other things, that when public funds are deposited in any bank by the Treasurer of the City and County of San Francisco, the depositary shall furnish as security for such deposits, bonds of the United States, or of this State, or of any county, municipality or school district within this State. The matter of loaning or depositing the funds belonging to the City and County of San Francisco is essentially a municipal affair in which the provisions of the charter must govern as against the provisions of the general laws of the State.

The Act of the Legislature referred to in your letter to me is a general act providing for the deposit of public moneys, and there are many conditions in it which would prevent it from applying to the City and County of San Francisco. The fact that the act under which the Flood Control District Bonds are issued provides that these bonds may be accepted as security for the deposit of public moneys, would not control against the express mandates of the charter, for the reason as I have already said, charter provisions are superior to the general law in matters that are strictly municipal; and furthermore, if each enabling act authorizing the issuance of bonds were to undo the express mandates of the charter, we would have the enabling act, rather than the charter adopted by the people, determining what particular

Nov. 7th, 1923.

SUBJECT: Deposit of Public Funds.

Dear Sir:

I have your letter of the 5th inst., asking me to advise you as to my opinion as to the legality of your proposed deposit of public funds in your bank.

Section 2 of Article XI of the Constitution of this State provides that the Legislature may by law designate the banks in which the moneys belonging to the State shall be deposited, and may prescribe the terms and conditions upon which such deposits shall be made, and may require such security for the safe keeping and prompt payment of the moneys deposited as it may deem proper.

Section 1 of Article XI of the Constitution of this State provides that the Legislature may by law authorize the corporate authorities of any county, city, town or village to make deposits of moneys belonging to such county, city, town or village, or of any sinking, municipality or school district fund thereof. The duties of treasurer or depositary of the funds of the City and County of Denver is imposed by the Charter of said City and County upon the Treasurer of said City and County of the Treasurer, the Supervisory Board of Trustees of the Police Department, both of the United States, or of any State, municipality or school district within said State. The duties of treasurer or depositary of the funds belonging to the City and County of Denver is specifically imposed

security might be accepted for the deposit of public moneys.

You are therefore advised that in the acceptance of securities for the deposit of public moneys, you are limited to the bonds mentioned in the charter.

Sincerely yours,

CITY ATTORNEY.

To the Treasurer.

Nov. 12th, 1926.

SUBJECT: Liens can be predicated against Awards made by Industrial Accident Commission only when approved by such Commission.

Dear Sir:

Your letter of November 9th, 1926, requesting an opinion as to whether an award made by the Industrial Accident Commission to an employee of the city is liable to a lien if a transcript of judgment has been filed according to Section 710 of the Code of Civil Procedure, is at hand.

OPINION.

The Constitution of the State of California, Article XX, Section 21 thereof, expressly vests in the Legislature plenary power, to create and enforce a complete system of workmen's compensation, in pursuance of which the Legislature of this State has enacted legislation providing for workmen's compensation and for the creation of liens under such act. Accordingly, Section 710 of the Code of Civil Procedure is not applicable, and Section 24 of the Workman's Compensation Act is controlling, and which provides in part:

> "No claim for compensation shall be assignable before payment, but this provision shall not affect the survival thereof, nor shall any claim for compensation, or compensation awarded, adjudged or paid, be subject to be taken for the debts of the party entitled to such compensation, except as hereinafter provided."

Subdivision "c" of said section provides in part:

> "If notice in writing be given to the insurance carrier or employer, if he be uninsured, setting forth the nature and extent of any claim that may be allowed as a lien, the said claim shall be a lien against any amount thereafter to be paid as compensation, subject to the determination of the amount and approval thereof by the commission."

It is my opinion, therefore, that before any claim or judgment can constitute a lien against an award made by the

[illegible]

Industrial Accident Commission, the same must first be presented in the form required and approved by said Commission.

Respectfully,

CITY ATTORNEY.

Auditor.

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Nov. 15th, 1926.

SUBJECT: Employment of Temporary Employees

by Board of Supervisors.

Dear Sirs:

I am in receipt of your letter as follows:

"The Board of Supervisors Demand No. 31 on the General Fund, dated September 14, 1926, contains the names of ten persons credited with rendering "Services appraising real property" at compensations ranging from $62.50 to $150 for the period from September 1 to September 16, 1926.

This demand is not in the usual form of a salary demand and was not presented to our Commission for approval.

We respectfully request your opinion as to whether or not the employment of persons by the Board of Supervisors for the above purpose, without approval by our Commission, is legal."

OPINION.

Although you do not so state, I take it that the persons mentioned in the above letter employed by the Board of Supervisors to render services in appraising real property, are temporary and not permanent employees of that Department.

Your attention is directed to Subdivision (a) of Section 11 of Article XIII of the Charter, which exempts from the provisions of that article, "persons employed by the Board of Supervisors for temporary services in positions requiring high technical skill". If therefore, the persons mentioned in the above letter are temporary employees of the Board of Supervisors, and the positions which they are filling require high technical skill, these positions would be exempt from the provisions of Article XIII of the charter. And it is equally true that if the positions do not require high technical skill, they would be subject to the provisions of the article mentioned to the same extent as would any other employee of the Board of Supervisors.

Under Section 14 of Article XIII of the Charter, your Commission is charged with the duty of the enforcement of the provisions of the article mentioned, and under this section you are

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Employment of temporary employees
by Board of Supervisors.

Dear Sir:

I am in receipt of your letter as follows:

"The Board of Supervisors passed No. 11 on the General Fund, dated September 14, 1922, enabling the Board of Supervisors to employ persons employed with rendering "certain appraising real property" at compensations ranging from $4.00 to $10 for the period from September 1 to September 15, 1922.

This demand is not in the usual form of a salary demand and was not presented to our Commission for approval.

We respectfully request your opinion as to whether or not the employment of persons by the Board of Supervisors for the above purpose, without approval by our Commission, is legal."

OPINION.

Although you do not so state, I take it that the persons mentioned in the above letter employed by the Board of Supervisors to render services in appraising real property, are temporary and not permanent employees of that Department.

Your attention is directed to Section (2) of Section 11 of Article XIII of the Charter, which adopts from the previous of that article. "persons employed by the Board of Supervisors for temporary service in positions requiring high technical skill". It therefore, the persons mentioned in the above letter are temporary employees of the Board of Supervisors, and the positions which they are filling require high technical skill, these positions would be exempt from the provisions of Article XIII of the Charter. And it is equally true that if the positions do not require high technical skill, they do likewise except to the provisions of the article mentioned in the above extract as well as any other employee of the Board of Supervisors.

Under Section 14 of Article XIII of the Charter, your Commission is charged with the duty of the enforcement of the provisions of the article mentioned, and under this section you are

given plenary powers to inquire into "the nature, tenure and compensation of all places in the public service". Therefore, you may, through your inspection department, or through any other agency that you deem proper, inquire into the character of the services which are being rendered by the persons mentioned in the above letter, and if, as the result of the investigation, you should conclude that the positions mentioned are of such a character as not to require high technical skill, you would have the right of refusing to approve any payroll for such services until the appointment to these positions was made in conformity with the provisions of Article XIII of the Charter, and according to the rules of your Commission. If the payrolls do not come before you in the ordinary way, you will be justified in notifying the Auditor and the Treasurer that these demands should not be paid.

In short, I am of the opinion that you have the right to classify these positions to the same extent as you would any other position in the public service, and if in your opinion they do not come within the exemption mentioned in Subdivision (a) of Section 11, you may insist that these positions be filled in conformity with the provisions of Article XIII.

You conclude your letter by asking as to whether or not the employment of the persons mentioned, without the approval of your Commission, is legal. I will state that if, after an investigation, you should determine that these positions come within the exemption mentioned, the Board of Supervisors have the right to make appointments to fill them. Should you determine that they do not, the appointments must be made from such list of eligibles as you deem best fitted, or non-civil service appointments must be authorized in conformity with the provisions of the charter.

Sincerely yours,

CITY ATTORNEY.

Civil Service Commission.

Nov. 22nd, 1926.

SUBJECT: Location of Trans-Bay Bridges.

Dear Sirs:

I am in receipt of your inquiry as to the power of the Federal Government to determine the location of a contemplated bridge over the Bay of San Francisco.

OPINION.

Under section 8 of Article I of the Constitution of the United States, Congress is given power "To regulate commerce with foreign nations, and among the several States, and with the Indian Tribes". The matter of the regulation of all navigable waterways within the United States comes within the power granted by this provision no matter whether those waterways are wholly within the confines of one particular state, or portions of them lie within different states. Where a navigable body of water lies wholly within a state, the power of regulating the construction of any structure which will interfere with its use for navigation remains in the state until Congress either by special act or general law acts in the premises.

Almost from the adoption of the Constitution, Congress has asserted its authority to regulate structures over or in the navigable waters of the country. In the beginning this regulation was usually by special act regulating the particular project at hand. In many of these cases the regulation was most minute, providing for the size of piers, length of draws and spans, and the height of the structure; in other cases the authority was more general, but in these it was usual to delegate the power of approval to some governmental agency subordinate to the Congress.

In 1899 Congress enacted a general law upon the subject - Section 9971 of the Revised Statutes of the United States reading as follows:

> "It shall not be lawful to construct or commence the construction of any bridge, dam, dike, or causeway over or in any port, roadstead, haven, harbor, canal, navigable river, or other navigable water of the United States until the consent of Congress to the building of such structures shall

Per. Ref. 1103.

SUBJECT: Location of Trans-Bay Bridges.

Dear Sir:

I am in receipt of your inquiry as to the power of the federal government to determine the location of a contemplated bridge over the Bay of San Francisco.

[redacted]

Under section 8 of article I of the Constitution of the United States, Congress is given power "To regulate commerce with foreign nations, and among the several states, and with the Indian Tribes". The master of the regulation of all navigable waterways within the United States rests within the power granted by this provision to Congress whether these waterways are wholly within the confines of one particular state, or partake of both its waters and those of different states. There is certainly body of water more entirely within a state, the power of regulating the obstruction of any streams which intersect with its use for navigation remains in the state until Congress either by special act or general law acts in the premises.

Almost from the adoption of the Constitution, Congress has asserted its authority to regulate structures over or in the navigable waters of the country. In the beginning this regulation was usually by special act regulating the particular project at hand. In many of these cases the regulation was most elaborate, providing for the size of piers, length of draw and spans, and the height of the structure; in other cases the authority was more general, but in either it was usual to relegate the power of approval to some governmental agency responsible to the Congress.

In 1899 Congress enacted a general law upon the subject - Section XVI of the Revised Statutes of the United States reading as follows:

> "It shall not be lawful to construct or commence the construction of any bridge, dam, dike, or causeway over or in any port, roadstead, haven, harbor, canal, navigable river, or other navigable water of the United States until the consent of Congress to the building of such structures shall

have been obtained and until the plans for the same shall have been submitted to and approved by the Chief of Engineers, and by the Secretary of War; Provided, That such structures may be built under authority of the legislature of a State across rivers and other waterways the navigable portions of which lie wholly within the limits of a single State, provided the location and plans thereof are submitted to and approved by the Chief of Engineers and by the Secretary of War before construction is commenced. And provided further, That when plans for any bridge or other structure have been approved by the Chief of Engineers and by the Secretary of War, it shall not be lawful to deviate from such plans either before or after completion of the structure unless the modification of said plans has previously been submitted to and received the approval of the Chief of Engineers and of the Secretary of War. (March 3,1899, c.425, 9, 30 Stat. 1151.)"

The Bay of San Francisco lying wholly within the confines of the State, it follows that the project which you now have before you comes within the first proviso of the section quoted.

The language of the section appears to be clear and unequivocal, and from its reading, and without doing violence to the language used, it would appear that in cases such as you now have under consideration that the Chief of the Engineers of the War Department and the Secretary of War must approve both the location and plans of the contemplated structure.

At times the question of the right of Congress to delegate its powers granted by the Constitution to the Secretary of War, has been questioned, but the Supreme Court of the United States has sustained this right.

See UNION BRIDGE CO. vs. UNITED STATES,

51 Law Edition U.S. Supreme Court Reports -386;

In passing on this point, Mr. Justice Harlan, speaking for the court, said: "Indeed it is not too much to say that a denial to Congress of the right, under the Constitution, to delegate the power to determine some fact or the state of things upon which the

enforcement of its enactment depends would be 'to stop the wheels of government' and bring about confusion if not paralysis in the conduct of public business". And further on the same subject the same judge said, "We are of the opinion that the act in question is not unconstitutional as conferring on the Secretary of War powers of such nature that they could not be delegated to him by Congress."

I am therefore of the opinion that before any bridge can be constructed over the waters of the San Francisco Bay, the location of, and the plans for the structure must be submitted to the Chief of Engineers of the War Department and to the Secretary of War for their approval.

I am advised some of the applicants for franchises to construct these bridges have contended that the word "location" as used in the act, should be considered to mean "locality", and that the Secretary of War has no power to refuse the right to approve the construction of a bridge at such "location" as your Board may select. I do not believe that such a meaning can be given to the word "location". This word is defined in Chespeake & O. Ry. Co. vs. Deepwater Ry. Co., 50 So. Rep. Page 595, as "the site or place of a thing". Therefore, if the Secretary of War and the Chief of Engineers must approve the location of the bridge, it is equivalent to saying that they must approve, the site or place where it is to be constructed. If the word "locality" were used in the Act, a different construction might be placed upon it, but as the more definite word is used, the Act must be construed as written.

You are therefore advised that before any bridge can be constructed over the Bay of San Francisco, the location, i. e., the exact site thereof, and the plans therefor, must be approved by the Chief of Engineers and by the Secretary of War.

Sincerely yours,

CITY ATTORNEY.

Board of Supervisors.

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November 20,1926.

SUBJECT: Tax on Personal Property
a lien on Real Property.

Dear Sir:-

Your request for an opinion, dated November 3,1926, as follows, is at hand:

> "This office has in the past considered for assessment purposes the personal property, such as household furniture, office fixtures, and automobiles, in the name of the husband as community property, and it has been the custom to leave only one blank at or for each married couple, said statement to cover all property owned, controlled, etc., by said party, usually in the name of the husband, he being recognized as the head of the house. Said statement contains therein the question "Does your wife or minor children own any separate personal property?"
>
> Where through neglect or refusal to file said statement, we are compelled by law to place an arbitrary assessment, we have in some cases made said arbitrary assessment in the name of the head of the house (husband) and secured the personal property tax to land standing in the name of the wife.
>
> Does the new community property law affect the above procedure and if so, must we demand separate statements from each person or can we assess in the name of the husband and include the words "and wife"."

OPINION.

Section 162 of the Civil Code provides:

> "All property of the wife, owned by her before marriage, and that acquired afterwards by gift, bequest, devise, or descent, with the rents, issues and profits thereof, is her separate property. The wife may, without the consent of her husband, convey her separate property."

Section 163 of the Civil Code Provides:

> "All property owned by the husband before marriage, and that acquired afterwards by gift, bequest, device, or descent, with the rents, issues and profits thereof, is his separate property."

Section 164 of the Civil Code provides, in part, that whenever any property is conveyed to a married woman by an instrument in writing the presumption is that the title is thereby vested in her as her separate property.

Section 687 of the Civil Code provides:

"Community property is property acquired by husband and wife, or either, during marriage, when not acquired as separate property of either."

From the foregoing statutes it appears that when real property stands in the name of the wife, the presumption is that it is her sole and separate property, unless there is other evidence to the contrary.

Section 3717 of the Political Code provides:

"Every tax due upon personal property is a lien upon the real property of the owner thereof, from and after twelve o'clock M of the first Monday in March in each year."

It is both logical and natural, in view of this section, that the real property and the personal property must have been owned by one and the same person in order that the tax upon the personal property might be a lien upon the real property.

A husband and wife are separate and distinct entities. While the law, in some respects, treats them as one, in regard to property rights, they are separate and apart from each other. Under the laws of the State of California, a husband has certain property rights, and a wife has different and other property rights.

An arbitrary assessment could not be made to attach a personal property tax to land standing in the name of the wife, unless the personal property were also the property of the wife. From the community property viewpoint, the husband owns all of the community. The presumption that when property stands in the name of the wife, it is her separate property, can be disputed and controverted, if evidence can be produced to show that the property is actually community property, even though it stands in the name of the wife alone. If that be the case, and such property is community, a tax upon personal property which belongs to the husband may become a lien upon such real property. It would be improper to place a lien on the sold and separate real property of the wife for taxes due upon the separate personal property of the husband or upon community personal property.

Under the laws of this state the community property vests in the husband alone, and the wife has a mere expectancy in it.

Roberts vs. Wehmeyer,191 Cal.601;
Stewart vs. Stewart, 72 C.A.D. 244.

From the foregoing it would appear that you must demand separate statements from a husband and wife, if each has property standing in his or her name alone, unless it can be shown that the property is community property and, in that event, the husband is required to pay the tax.

To a great extent the question asked is one which would require evidence of circumstances in order to indicate what law would govern a precise situation; for instance, if property stands in the name of the husband it should be assessed to him; if property stands in the name of the wife it should be assessed to her. If there is separate or community personal property belonging to the husband, and he pays no tax upon it, no lien can be placed upon the separate real property of the wife for the payment of the tax, unless the property standing in the name of the wife can be shown to be community property. Therefore, in many instances it would be necessary to demand separate statements from the husband and wife. If the property is community, you might assess in the name of the husband, and include the words "and wife", although the entire matter resolves itself down to the proposition of determining the status of the respective properties before an assessment can be properly made.

The best course to follow would be to divide the classes of property into three parts, to-wit:

Community Property;
Separate Property of the Husband; and
Separate Property of the Wife;

and then determine by proper evidence under what status the particular property in question falls.

In your request for an opinion you have cited some instances where you have made arbitrary assessments in the name of the husband and secured the personal property tax to land standing in the name of the wife. This is obviously improper, unless it can be shown by you that the property standing in the name of the wife is actually community property. As a practical proposition, this frequently occurs.

Respectfully,

City Attorney.

THE ASSESSOR.

San Francisco, November 24, 1926.

SUBJECT: Franchise Abandonment.

Dear Sirs:

Receipt is acknowledged of your communication dated September 30, 1926, reading as follows:

"The Market Street Railway Company has filed a communication with the Board of Supervisors requesting permission to remove and abandon the tracks on 33d Avenue from Taraval Street to Vicente Street; on Vicente Street from 33d Avenue to 35th Avenue; and on 35th Avenue from Vicente Street to Sloat Blvd.

The Public Utilities Committee, who have this matter under consideration, desires to be advised as to whether the City can legally grant this request. If so, you are requested to prepare the necessary ordinances to accomplish this purpose, giving due regard to the protection of the City's interests."

OPINION.

The portion of the franchise sought to be abandoned by the Market Street Railway is described in Ordinance No. 288 (New Series) approved October 14, 1907. The text of this Ordinance may be found at page 169 of the publication entitled "Book of Franchises, issued in 1910".

The right to operate a street railway over the streets described in the ordinance is given to the Parkside Transit Company, the predecessor in interest of the Market Street Railway. A portion of the route is operated on what formerly was private property. The Ordinance recites that the grant to operate the route described is given "upon the following express conditions, to be strictly complied with". One of the conditions imposed on the grantees or assigns is that they "shall continuously operate the whole of the railway hereby authorized * * * * * *". Further on in the franchise it is provided, a failure to comply with any of the conditions enumerated shall work an immediate forfeiture of the franchise and the Board of Supervisors shall not have power to relieve such forfeiture or any of the conditions imposed.

Similar language is set forth in Art. II, Chap.II, Sec. 6, of the Charter of the City and County of San Francisco.

The questions to be determined may be stated as follows:

San Francisco, November 24, 1906.

SUBJECT: Franchise Amendment.

Dear Sirs:

Receipt is acknowledged of your communication dated September 20, 1906, reading as follows:

"The Market Street Railway Company has filed a communication with the Board of Supervisors requesting permission to remove and abandon the tracks on Post Street from Taylor Street to Fifteenth Street; on Fifteenth Street from Post Avenue to Fell Avenue; and on Fifth Avenue from Fifteenth Street to Lake Street.

The Public Utilities Commission, who have this matter under consideration, desires to be advised as to whether the City can legally grant this request. If so, it is requested to prepare the necessary ordinances to accomplish this purpose, giving due regard to the protection of the City's interests."

[illegible]

The portion of the franchise sought to be abandoned by the Market Street Railway is contained in Ordinance No. 849 (New Series) approved October 14, 1897. The text of this ordinance may be found at page 119 of the publication entitled "Book of Franchises, issued in 1899".

The right to operate a street railway over the streets described in the ordinance is given to the Pacific Transit Company, the predecessor in interest of the Market Street Railway. A portion of the route is operated on what formerly was private property. The ordinance recites that the grant is made [illegible] upon the following express conditions, to be strictly complied with". One of the conditions imposed on the grantee or assignee is that they "shall continuously operate the tracks of the railway hereby authorized * * * * *". Further on in the franchise it is provided, "failure to comply with any of the conditions enumerated shall work an immediate forfeiture of the privileges and this board of supervisors shall not have power to relieve such forfeiture on any of the conditions imposed.

Similar language is set forth in Art. XI, Ord. 849, of the Charter of the City and County of San Francisco.

The questions to be determined may be stated as follows:

1. Has your Board, in view of the language contained in the franchise and the Charter provisions, the power to permit the abandonment of a portion of the route granted under the franchise in question?

2. Will such an abandonment inconvenience the public?

I will first answer question 2 by saying that the necessity for the abandonment and the matter of convenience or inconvenience to the public if the abandonment is allowed are matters of fact for the Board of Supervisors to determine.

I am informed that part of the route sought to be abandoned passes over what was at one time private property and it would be well to ascertain if any contracts exist with the railway and the former owners of the right of way traversed which would conflict with the passing of an ordinance allowing the abandonment.

You have asked in your communication that "due regard be given to the protection of the City's interests". If in your judgment you deem the abandonment sought will not inconvenience the public but rather tend to improve the car service in the district over which the Market Street Railway now operates, you may impose conditions in granting the abandonment, if you deem it proper.

The City at present is engaged in litigation with the Market Street Railway to endeavor to resist the claim of that company whereby it is sought to have the City and County pay for the entire cost of maintenance of all crossings over which the Municipal Railway passes where jointly used by the latter and the Market Street Railway, this company having used the crossings prior to the City railway. This litigation should not enter into your deliberations as the subject matter of the suit is foreign to the question presented. The case has been set for trial on December 13, 1926.

Your attention is however directed to the fact that the Market Street Railway has refused to pay the last quarterly license of fifteen dollars per annum on each car owned by it. This license is provided for under the terms of the franchise in question and Ordinance No.5132 (New Series). This office is about to file suit to collect the license due. These matters are called to your attention so you may be advised of the business pending between the Market Street Railway and the City.

I have been unable to find in California that our Courts have been called upon to pass on a similar set of facts as

1. Has your Party, in view of the language contained in the Preamble and the Charter provisions, the power to permit the abandonment of a portion of the route granted under the franchise in question?

2. Will such an abandonment inconvenience the public?

I will first answer question 2 by saying that the necessity for the abandonment and the matter of abandonment or inconvenience to the public if the abandonment is allowed are matters of fact for the Board of Supervisors to determine.

I am inclined that part of the first question is to be answered to the effect that when at one time privately owned it would be well to consider if any contracts exist with the railway and the former owners of the rights of way thereon which would conflict with the granting of the abandonment.

You have stated in your communication that "use regard be given to the proposition of the City's interest". If in your judgment you deem the abandonment should will not inconvenience the public but rather tend to improve the use service in the district over which the Market Street railway now operates, you may impose conditions in granting the abandonment, if you deem it proper.

The City at present is engaged in litigation with the Market Street Railway to endeavor to recall the grant at that company thereby it is sought to have the City and County put for the entire part of maintenance of all operations over which the municipal railway cannot fairly operate by the latter and the Market Street Railway cannot fairly operate by the latter and the Market Street Railway, this company having used the property prior to the City ownership. This litigation should not delay [illegible] the matter of the Market Street Railway Company in the matter of the abandonment. The case has been set for trial on December 13, 1948.

[illegible] is hereby directed to see just what the Market Street Railway Company is going to do with reference to filing [illegible] per terms on [illegible] and advise by it. This matter is [illegible] the return of the Traffic [illegible] and [illegible] [illegible] [illegible]. This matter is about to file suit to enjoin the [illegible]. There matters are called to your attention so [illegible] to advise of the [illegible] between the Market Street Railway and the City.

I have been unable to find in California that any [illegible] have been called upon to pass on a similar set of facts in

presented in Question 1 but the nearest approach to it is the following text from 23 Cal. Jur. p. 853:

"It seems that a City may waive a forfeiture of a street railway franchise or be estopped to assert it."

In support of the foregoing, reference is made to the case of People vs. Sutter Street Railway Co. 117 Cal. 604 but this case does not support the text quoted.

In Los Angeles Railway v. Los Angeles, 152 Cal. 242 refers to the grant by a municipality to operate a railway as a contractual relationship and many standard text writers also consider such grants as contracts. I know of nothing that inhibits all parties to a contract, by consent of all, reforming the contract which in the instant case would be by allowing the abandonment of the operation of the portion of the route described. There are cases in which it is held that where construction of the road is not commenced within the statutory time a board of Supervisors may extend the time irrespective of similar language as is set out in our Charter and the instant franchise. Such action, it is held, acts as an estoppel to later having the franchise forfeited.

If you are of the opinion that a necessity for the abandonment exists you may allow it.

Enclosed is a form of ordinance as requested in your communication.

Respectfully,

CITY ATTORNEY

Public Utilities Committee,
Board of Supervisors.

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December 6, 1926.

Subject: Exemption from Local Assessments of Property Held by Veterans' Welfare Board.

Dear Sir:

REQUEST.

Your request for an opinion concerning whether or not property acquired by the Veterans' Welfare Board of California to be sold on contracts, prior to the enactment of a local assessment is liable for the payment of such assessment, was received by this office.

OPINION.

Property of the State of California is exempt from taxation. There is an express provision to this effect in the Constitution and the Political Code.

Pol. Code Section 3607
Constitution Art. XIII, Sec. 1.

Real property to which title is held by the Veterans' Welfare Board of the State of California is owned for private use and not in the performance of a public function. Such lands in the absence of constitutional or legislative restriction may be justly compelled to bear their part of expense which goes directly to increase their values.

24 Cal. Jur. p.97.

There is nothing in the Constitution of this State nor in the Code which exempts from taxation property held for private purposes by the Veterans' Welfare Board.

Act 7744, General Laws 1923, Statutes 1921 page 815, Section 7, provides in part that if a purchaser of land from the Veterans' Welfare Board fails or neglects to pay, satisfy and discharge at maturity all taxes or assessments, it shall be lawful for the Board to pay, satisfy or discharge or settle or compromise such taxes or assessments. This would indicate conclusively that the legislature, when the act was enacted,

January 6, 1880.

Subject: Quieting Title Local Improvements
AC Property held by Trustees'
Delaware Docket.

Dear Sir:

[redacted].

Your inquiry for an opinion concerning whether or not property acquired by the Trustees' Relief Bond of Millsville is held as security, prior to the enactment of a local ordinance is liable for the payment of such assessment, was received by this office.

[redacted].

Broadly it has been of California is stood from Pacific. Under it as opposed provision to this stood in the Constitution and the Political Code.

pol. Sci. Review 1907
Quarterly 1st. XIII, No. 1.

Real property so sold title is held by the Trustees' Relief Bond of the State of California is owned for private use and not in the performance of a public function. Upon lands in the tenure of [illegible] or legislative restriction may be fairly accepted to keep their part of assume which does already to preserve their value.

46 Cal. Rep. p.87.

There is another in the Constitution of this type not in the Code quite similar from taxation property held for private purposes by the Trustees' Relief Bond.

[illegible] Revised Code 1880. Sections 1283 page 814. Section 7. Providing in part that a purchaser of land from the Trustees' Relief Bond fails or refuses to pay, notify and interest as monthly all person or assessments. It shall be legal for the Board to pay, notify or [illegible] or [illegible] such liens as aforesaid. This would indicate that the legislature, also the tax was enacted,

intended that assessments should be paid on land to which title is held by the Veterans' Welfare Board and of which a war veteran is an equitable owner.

The exemption of land held by public agents from taxation applies to general state, county and municipal taxes, and does not extend to its exemption from a local assessment for a street improvement enhancing the value, if not actually used for any public purpose. The rule in this State is that public property when actually devoted to public use is exempt from assessments under special laws, otherwise not.

City Street Improvement Co. v. Regents of the University of California, 153 Cal. 776.

Public property is exempt from liability to assessment for public improvements only when it is actually appropriated to public use.

City of Fresno v. Fresno Irrigation District, 237 Pac. 772.

From the foregoing citations of authority it would of necessity appear that since local assessments placed upon real property for private reasons and for private good are such that the State would not benefit therefrom, such real property is liable for local assessments, irrespective of the fact that the title is vested in the Veterans' Welfare Board. As a matter of fact, the Veterans' Welfare Board holds only the bare-naked legal title, generally speaking, and the purchaser of the property holds the equitable title and is entitled to all of the benefits accruing to the property after he enters into his contract with the Board.

Respectfully,

CITY ATTORNEY

Tax Collector.

Page 17- [illegible]

[illegible] interest that exemptions should be paid on land to which title is held by the Veterans' Welfare Board and of which a war veteran is an eligible owner.

The exemption of land held by public agents from taxation applies to general state, county and municipal taxes, and does not extend to its exemption from a local assessment for a street improvement conferring the value, if not actually used for any public purpose. The rule in this state is that public property when actually devoted to public use is exempt from assessments under special laws, otherwise not.

City Street Improvement Co. v. Regents of the University of California, 148 Cal. 775.

Public property is exempt from liability to assessment for public improvements only when it is actually appropriated to public use.

City of Fresno v. Fresno Irrigation District, 207 Cal. 771.

When the Constitution states of maturity it would of material import that these local improvements placed upon real property for private purposes and for private good are such that the State would not benefit thereform, such real property is liable for local assessments, irrespective of the fact that this is vested in the Veterans' Welfare Board. In a matter of fact, the Veterans' Welfare Board holds only the bare-legal title, practically speaking, and the purchaser of the property holds the equitable title as evidenced by all of the benefits accruing to the property after he enters into his contract with the State.

Respectfully,

[illegible]

Tax Collector.

December 13,1926.

SUBJECT: Extradition Expenses.

Gentlemen:-

Under date of December 1,1926, your Honorable Committee has requested an answer to three questions concerning payment by the City and County of extradition expenses for the return to this jurisdiction of a person charged with a felony.

Investigation of the facts shows that in June,1926, Goldstone Brothers swore to a complaint before a Police Judge charging Walter Cooper with a felony, to-wit, grand larceny. Later Cooper was located in Portland, Oregon, a warrant signed by Hon. J. J. Fitzpatrick was issued, and demand was made by our Governor upon the Governor of the State of Oregon for his return, and in order to secure his return Goldstone Brothers deposited with the police the sum of $200.00 to cover the expenses of a police officer, designated as the agent of the City and County, to procure Cooper's return.

Thereafter an affidavit of Peter F. Gourneen, as Assistant District Attorney was filed in the Police Court, and Hon. L. T. Jacks, a judge of our Police Court, made an order to the effect that the Auditor draw a demand upon our City Treasurer for the balance due for said expenses in the sum of $134.65. Cooper was returned and Adrian Goldstone appeared as a witness against him at the preliminary hearing in the Police Court, the charge against Cooper being dismissed.

OPINION.

Your first question is:

"Has a Police Judge authority to make such an Order?"

The statutory liability for the payment of extradition expenses is found in Sec.1557 of our Penal Code, which provides that when demand is made for extradition of a fugitive from justice from another state the expense of his return "must be audited by the board of control and paid out of the state treasury; provided, however, that the state shall not pay the expenses of any such person so employed where the fugitive returned is not arraigned or placed on trial, but such expense shall be a charge upon the county asking the requisition; provided, further, that when a warrant has issued from a Superior Court or the presiding judge thereof, endorsed by the district attorney of the county or city and county for the purpose of extraditing a fugitive from justice who has been found and arrested in any state of the

December 31, 1938.

Subject: Information Requested.

Gentlemen:

Under date of December 3, 1938, your Honorable Committee
has requested me to submit to you certain information relative to the
affairs and conduct of corporations engaged (as the writer is) in
[illegible] of a certain standard cost [illegible].

Immediately on the [illegible] of the 1st day of June, 1938,
[illegible] with a [illegible] period [illegible]. Since [illegible]
[illegible] [illegible], a partner [illegible] to [illegible] in [illegible]
[illegible] [illegible], and in order to secure [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]

United States or any foreign government, the county auditor shall draw his warrant and the county treasurer shall pay to the person designated to return the fugitive the amount of expense estimated by the district attorney to be incurred in the return of such fugitive."

It will thus be seen that Cooper was never tried in the legal sense, nor was he ever legally arraigned and therefore no liability rests upon the State of California, in this instance, and the sole remaining questions are as to the liability of this City and County and who is the proper party to make demand for such expenses.

The liability for such extradition expenses being statutory, the provisions of such statute must be strictly construed.

The City and County of San Francisco, in the absence of arraignment or trial of such fugitive would be liable, under the first proviso of Section 1557 of the Penal Code, for such expenses, but the second proviso really governs and explains the first one, and in said second proviso such liability of this City and County is fixed only "when a warrant has issued from a Superior Court, or the presiding judge thereof."

However, it is clearly the law that the claimant must be "the person so employed" or "the person so designated to return the fugitive". In this instance, a police officer was so designated and employed.

Goldstone Brothers were never so employed nor were they the persons designated to return Cooper and therefore Goldstone Brothers are not in a position to make any claim for extradition expenses.

No provision is found in law for the payment of expenses of a fugitive from justice upon an order signed by a Police Judge and therefore no such liability exists, and, in my opinion, a Police Judge has no authority to make such an order.

Your second and third questions are as follows:

Second - "Having authority to make such an Order on the Auditor, does it then become a matter for consideration by the Finance Committee, or the Board of Supervisors?"

Third - "Having authority to make such an Order; and it being a matter for consideration by the Finance Committee, or the Board of Supervisors; has the Finance Committee or the Board of Supervisors the power to prove or disprove payment as authorized by such Order of the Police Judge?"

Dec. 18th, 1933.

Inasmuch as the answer to both questions relate entirely to the authority of a police judge to make such an order and as I have already stated, in my opinion, no such authority exists, no answer is necessary to your second and third questions.

Respectfully,

City Attorney.

BOARD OF SUPERVISORS.

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Dec. 15th, 1926.

SUBJECT: Bridge or Bridges to be Constructed
Over Waters of San Francisco Bay.

Dear Sirs:

I am in receipt of your letter transmitting record of meeting of the Special Bridge Committee of your Board, held on Friday, November 26th, 1926, in which record appear various resolutions and questions, asking to be advised on matters pertinent to the construction of bridges.

I will note the matters on which you ask to be advised, as I have found them in the record.

1. Resolution introduced by Supervisor McSheehy.

"WHEREAS, this Board resolved to retain the services of three eminent consulting engineers to advise and assist this Board in selecting the best Bay Bridge project from among the various projects submitted by private parties seeking a franchise from the city; and

WHEREAS, All private proposals having now been submitted and fully explained, it seems entirely possible that many excellent sites and plans are not included among them and that other sites, equally or more advantageous, may exist; and

WHEREAS, Sound policy dictates that so huge and important a monopoly as the future Bay Bridge should not be a Simon-pure private enterprise but should be under the control of the governmental authority of San Francisco in all essential respects; therefore, be it

RESOLVED, That this Board hereby adopts the following policy and course of action with regard to the Bay Bridge:

1. That the work of the three consulting engineers to be retained by this Board shall not be confined to reporting on the private projects already submitted, but shall be extended to include the selection of an ideal site or sites, and the study and testing of said site or sites in every necessary way, looking toward the adoption by this Board of a

Dec. 11th, 1916.

Subject: Bridge or Bridges to be Constructed

Over Waters of San Francisco Bay.

Dear Sirs:

I am in receipt of your letter transmitting report of meeting of the Special Bridge Committee of your Board, held on Friday, November 10th, 1916, in which report appear various resolutions and questions, relating to be advised on matters pertinent to the construction of bridges.

I will note the matters on which you ask to be advised, as I have found them in the report.

1. Resolution introduced by Supervisor McSheehy.

"Resolved, This Board resolved to retain the services of three eminent consulting engineers to advise and assist this Board in selecting the best Bay Bridge project from among the various projects submitted by private parties seeking a franchise from the city; and

Resolved, All private proposals having now been submitted and fully explained, it seems entirely possible that many excellent sites and plans are not included among them and that other sites, equally or more advantageous, may exist; and

Resolved, Such policy dictates that so large and important a monopoly as the future Bay Bridge should not be a Simon-pure private enterprise but should be under the control of the government, ultimately at least franchise in all essential respects; therefore, be it

Resolved, That this Board hereby adopts the following policy and course of action with regard to the Bay Bridge:

1. That the work of the three consulting engineers to be retained by this Board shall not be confined to reporting on the private projects already submitted, but shall be extended to include the selection of an ideal site or sites, and the study and locating of such site or sites in every necessary way, looking toward the adoption by this Board or a

location which shall be the selection of the City pf San Francisco itself; and

2. That, after selecting such site, this Board shall next proceed to have complete plans and specifications drawn up, likewise under the supervision of eminent engineers employed by this Board; which plans and specifications shall be adopted as the official plans and specifications of the City of San Francisco; and

3. That the said engineers, accompanied by the proper city officials and committee of this Board, shall then proceed to obtain the sanction of the War Department for the construction of the bridge itself; and

4. That the question of the financing of the bridge, whether by private parties under competitive bidding or by the use of public funds, shall be left for decision until such time as the City's plans are approved and the project ready to construct."

2. Question by Supervisor Shannon (typewritten record page 4). Can the Board of Supervisors select an engineer to select a site for the proposed bridge, and prepare plans and specifications for the bridge for the approval of your Board, the Engineer to receive a commission for his work, the amount thereof to be fixed by your Board. Thereafter, can financiers be paid a commission for financing the construction, and bonds issued which will be a lien against the bridge, the collecting of tolls to be under the supervision of the City, and when all the bonds are paid the bridge to belong to the City, and if the bridge would be deemed a highway.

3. Question by Mr. Charles Brennan (typewritten record page 41). Has the Board of Supervisors the power to advertise for bids for the building of a bridge from one county into another with a navigable stream separating the two.

4. Question by Supervisor Stanton (typewritten record page 41). What action can be taken by bridge committee relative to applications for bridges now pending before the Board, and can any matter relative to the subject be considered at any meeting save at a so called bridge hearing.

5. Question by Colonel Rand (typewritten record page 44). Has the City under its charter or under its budget, or in any fund, funds available to pay for the services of Engineers to investigate a bridge proposition extending into adjacent counties, separated by navigable streams.

[illegible] which would be the selection of the city
of the [illegible] itself; and

b. That, after selecting such site, this board
shall have proceed to have complete plans and
specifications drawn up, likewise under the supervision of eminent engineers employed by this board; which plans and specifications shall be adopted as the official plans and specifications of the city of [illegible]; and

c. That the said engineers, accompanied by the proper city officials and members of this board, shall then proceed to obtain the approval of the [illegible] Department for the construction of the bridge itself; and

d. That the question of the financing of the bridge, whether by private parties under revocable grants allowing or by the use of public funds, shall be left for decision until such time as the city's plans are approved and the project ready to commence."

3. [illegible] by Supervisor Brennan [illegible] second page 41.
Can the Board of Supervisors enlist an engineer to select a site for the proposed bridge, and prepare plans and specifications for the bridge for the approval of your Board. Thereafter, can financing be provided for financing the construction, and after issue will it be a toll bridge the building of which may be paid by the bridge to belong to the city, and also all the bridge would be issued a highway.

3. Question by Dr. Charles Brennan [illegible] second page 41.
Can the Board of Supervisors the power to advertise for bids [illegible] of a bridge from one county into another with a vertical stream separating the two.

4. Question by Supervisor Shelvin [illegible] second page 41.
What action can be taken by bridge committee relative to appointing for bridges now pending before the Board, and can any other interested to the matter be notified at any meeting when it is to be called bridge hearing.

5. Question by Colonel Hunt [illegible] second page 41.
Can the city under its charter [illegible] the bridge, or is any funds available to pay for the services of engineers to investigate a bridge proposition extending into adjacent counties, separated by navigable streams.

I will give consideration to the questions in the order noted. Supervisor McSheehy's resolution and Supervisor Shannon's questions must necessarily be given consideration together.

The resolution deals first with the retaining by the Board of Supervisors of Engineers to report not only on the private projects already submitted but also to study and report on additional sites, and when the site has been selected by the Board, to prepare plans and specifications for a bridge at the site selected.

Your attention is directed to Section 10, Chap. I, Art. VI of the Charter, reading as follows:

> "All examinations, plans and estimates required by the Supervisors in connection with any public improvements or utilities, shall be made by the Board of Public Works and it shall when requested to do so, furnish information and data for the use of the Supervisors."

I am of the opinion that the construction of a bridge such as you have under consideration at the present time, or the selection of a site therefor, is a public improvement, and that under the plain language of the charter quoted, all examinations, plans or estimates for the same must be made by Engineers appointed by the Board of Public Works.

It is a well settled rule of law, that a county board is without power to employ or contract with a person to perform acts which are a part of the official duties imposed by law upon another official. This principle has been sustained by the Supreme Court of this State in numerous cases.

See VENTURA COUNTY vs. CLAY,

112 Cal. 65.

In this case the court held that the Board of Supervisors had no power to appoint a private individual to collect licenses when the Tax Collector of the County was charged with the duty of so doing.

In the case of BEHMAN vs. WEBSTER,

139 Cal. 452,

The Supreme Court sustained the contention of the Superintendent of Schools, to the effect that the Board of Education had no power to

employ special counsel to represent them, as the City Attorney was charged with the duty of representing the Board.

The District Court of Appeals expressed the same views on the subject, when in

RAFAEL v. BOYLE,

31 Cal. Appeals,

it denied the right of the Civil Service Commission of San Francisco to retain special counsel, for the reason that it was the duty of the City Attorney to represent the Commission.

You are therefore advised that if your Board desires any examinations or estimates made in connection with the applications for bridge franchises which are now pending before you, the same must be made by Engineers employed by the Board of Public Works.

In this connection permit me to state, that in my opinion your Board will be justified in calling on the Board of Public Works for expert engineering advice relative to the granting or refusing the applications now pending, whether this advice may be to aid you in determining the most suitable location for the contemplated bridge, its form of construction, or any other fact that may be necessary for you to determine in passing on the various applications, and in presenting to your Board their views on the various locations the engineers will be justified in comparing those already before you with others which they may deem more suitable. You are advised, however, that when you come to receive the advice or estimates of the Engineers selected, the same should be received only at the regular so-called bridge hearings.

In considering the right of your Board to select a site and prepare plans for a bridge, we must necessarily give consideration to the right of the City to construct a bridge. Under the Act of the Legislature passed March 14th, 1881, (Stats. 1881-p. 76) this right is given to a municipality under certain conditions. Section 3 of the Act is as follows:

> "Where a navigable stream is the boundary line between the counties, the boards of supervisors of such counties may join in the construction of a bridge, upon such terms as may be agreed upon; provided, however, that in case of a failure to agree, either county may build the bridge and maintain control thereof."

employ special counsel to represent them, as the City Attorney was charged with the duty of representing the Board.

The District Court of Appeals approved the same view on the subject, when in

STATE v. DAVIS,

11 Ind. App. 1.

it denied the right of the Civil Service Commission of San Francisco to retain special counsel, for the reason that it was the duty of the City Attorney to represent the Commission.

You are therefore advised that if your Board desires any examinations or withdraws made in connection with application for Bridge Tenderships which are now pending before it, the same must be made by Engineers employed by the Board of Public Works.

In this connection permit me to state, that in my opinion your Board will be justified in calling on the Board of Public Works for expert engineering advice relative to the granting or refusing the applications now pending, whether this advice may be to ask you to determine the most suitable location for the contemplated bridge, the form of construction, or any other fact that may be necessary for you to determine in reaching on the various applications, and in presenting to your Board their views on the various locations the engineers will be justified in accepting those already before you when others which may then have arisen. You are advised, however, that when you come to receive the advice of the Engineers employed, the same should be received only at the regular re-called bridge hearings.

In considering the right of your Board to select a site and prepare plans for a bridge, we must tentatively give consideration to the right of the City to construct a bridge. Under the act of the Legislature passed March 14th, 1913, (Stats. 1913, p. 74) this right is given to a municipality under certain conditions. Section 3 of the act is as follows:

> "Where a navigable stream is the boundary line between two cities, the power of supervision of such cities may join in the construction of a bridge, upon such terms as may be agreed upon; provided, however, that in case of a failure to agree, either county may build the bridge and maintain control thereof."

You will note from this provision of the Statute, it would first be incumbent on your Board to negotiate with the Supervisors of Alameda County, and if an agreement cannot be reached, you would be privileged to arrange for the construction of the bridge by this city and county.

As to the preparation of plans for a bridge, you are advised that should the City determine to construct a bridge, you undoubtedly have the power, and it will be necessary that plans therefore be prepared, but I can find no provision in the law which authorizes the City to prepare these plans and permit the same to be used by any individual applicant for a bridge franchise. Nor can I see any way whereby an engineer can be paid a commission for preparing plans, unless the City itself is to build the bridge in question, for the reason that if any individual is to build the bridge, that individual must necessarily bear the expense thereof.

In the matter of financing the bridge, you are advised that the plan suggested by Supervisor Shannon is not legal. If any bonds were issued by the City to build a bridge (and I expressly refrain from expressing any opinion on this point for there is some doubt as to the right of the city to incur bonded indebtedness for this purpose), they would create the same liability against the city as would bonds issued for any other purpose, and would be subject to all charter limitations relative to the incurring of bonded indebtedness. It is not possible for the City to issue bonds which would be a lien only against the bridge. In closing on this point, permit me to direct your attention to Section 7 of the Act of 1881 above referred to, which provides that where tolls are collected on a bridge built by the County, they are limited to an amount sufficient to pay for the construction and keep up the repairs and expenses of the bridge. This provision would seem to preclude a bridge constructed by the City being a source of revenue to its treasury.

We will now give consideration to paragraph 4 of Supervisor McSheehy's Resolution as to the financing of the bridge by private parties or by competitive bidding.

I am of the opinion that the construction of a bridge cannot be financed in either way. If the City itself can construct the bridge, it must finance it from its own funds, and I know of no provision of the law which permits or even contemplates private financing of a publicly owned bridge. If the City does not construct it, and it is to be constructed, the whole matter must be dealt with as provided in the Political Code and the Act of 1881 above referred to, that is, bythe granting of some application for

a franchise to a private person or corporation. In passing upon such applications as are or may come before you, the law presumes that you will grant the one most suitable and beneficial to the needs of the City, but there is no provision in the law which will permit you to select a site that you may deem most advantageous, and then grant the permit or franchise to construct a bridge to the individual or corporation making the highest bid for the privilege. The only law which governs the granting of franchises to the highest bidder therefor, other than those provided for in our charter, is the Act of the Legislature passed in 1905, commonly known as the "Broughton Act". This Act provides for the offering of various franchises by Board of Supervisors, and the granting of the same to the individual or corporation offering the most advantageous terms, but our Supreme Court has held that the matter of granting franchises to construct toll bridges between two counties does not come within the provisions of this Act. This decision was rendered in the case of

POOL vs. SIMMONS,

134 Cal. 621,

which construed the Act of 1893, which contains practically all of the provisions of the Broughton Act of 1905. The decision was given in a case involving the granting of a ferry franchise, but as such a franchise is governed by the same provisions of the Political Code, the same reasoning must apply. You are therefore advised that as the law now stands that it is not possible for you to select a site on which you believe a bridge should be constructed and then let the franchise for a bridge to the highest bidder.

In advising you as above, I have not given consideration to the Act of 1923, amended in 1925, providing for the organization of Bridge and Highway Districts, and for the building and acquisition of bridges, etc. This Act provides for the organization of one or more counties or parts of counties into a Bridge and Highway District, and the building of the bridge or bridges by taxation of the property within the district. The affairs of the district are managed by a Board of Directors appointed by the Boards of Supervisors of the respective counties within the district. I take it that the proceedings which you now have before you do not involve such a district, and hence I have refrained from commenting on this particular Act.

In regard to the question asked by Mr. Brennan and above set forth, I believe that my view heretofore expressed sufficiently answers his question.

In regard to Supervisor Stanton's question, permit me to state that I am of the opinion that all matters pertaining to the

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applications for franchises which you now have before you should be considered only at your so called bridge hearings, and that the consideration of sites or plans other than those before you at the present time might possibly be considered to be pertinent to the granting of any application which is now before you, and rather than have any award of franchise (should you make one) declared invalid, I would advise ~~erring even on the side of safety, and~~ that you consider all bridge matters at regular hearings. Such matters as making inquiry as to Engineers, passing resolutions for authorizing their employment by the Board of Public Works, making appropriations for their payment, and similar matters, may receive your consideration at other times.

In regard to Colonel Rand's question, you are advised that it is within the power of your Board to make appropriations to the Board of Public Works from any funds not otherwise appropriated, for the payment of Engineers retained to advise you.

The above opinion is based on the supposition that the bridges which you are considering are toll, and not free bridges.

Sincerely yours,

CITY ATTORNEY.

To the Board of Supervisors.

Dec. 20th, 1926.

SUBJECT: Authority of Supplies Committee of Board of Supervisors to direct Weights and Measures Department in matter of repairs to automobiles.

Dear Sir:

Your communication of the 13th inst., requesting opinion on the below outlined matter, was duly received.

REQUEST.

"Will you kindly give me an opinion relative to the authority of the Supplies Committee of the Board of Supervisors to designate the firm where needed repairs, not exceeding Twenty Dollars per month, shall be made on the Ford cars in use in the Department of the Sealer of Weights and Measures."

OPINION.

The first matter to be determined is whether "repairs to automobiles" falls within the generic category, "supplies".

A reference to my opinion, under date of May 24th, 1926, to the Finance Committee of the Board of Supervisors, determining that the hire of teams and automobiles for city purposes is truly a supply to our city government, will conclusively demonstrate that "repairs to automobiles" must likewise come within the meaning of "supplies".

Such being the case, Section 4 of Ordinance No. 5880 (new series), authorizing the Purchaser of Supplies to enter into all contracts, and sign all purchase orders for supplies, where contracts covering the same have been awarded by the Board of Supervisors upon recommendation of the Supplies Committee, indicates that your department must follow the dictates of the above authority.

Trusting that this satisfactorily answers your query, I am,

Very truly yours,

CITY ATTORNEY.

Department of Weights
and Measures.

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Dec. 18th, 1926.

SUBJECT: Recording Notice of Default
Under Trust Deed.

Dear Sir:

I am in receipt of your request that you be advised whether or not Notices of Default under Trust Deed must be acknowledged before same are entitled to be recorded.

OPINION.

Sec. 2928 of the Civil Code provides for the recording of such notices, the provision being as follows:

> "a. The trustee, mortgagee or beneficiary shall first record in the office of the recorder of the county where the mortgaged or trust property or some part thereof is situated, a notice of such breach and of his election to sell or cause to be sold such property to satisfy the obligation."

You will note that there is no provision in the law for any acknowledgment of the notice. Sec. 4131 of the Political Code provides what documents the Recorder must record. While the particular document pertinent to the instant case is not specifically mentioned in the section, it is undoubtedly covered by Sub. n.thereof, which reads as follows: "Such other writings as are required or permitted by law to be recorded".

Therefore, the only question to consider is whether the notices mentioned must be acknowledged. Section 1161 Civil Code specifies what instruments may be recorded without acknowledgment. Query: Is the notice mentioned an instrument?

In HOAG vs. HOWARD,

55 Cal. 564,

The court has defined the word "instrument" as used in the section as "Some written paper or instrument signed and delivered by one person to another transferring the title to or creating a lien on property, or giving a right, to a debt or duty."

Dec. 24th, 1860.

Subject: Investing Trains of Animals
Taken Trade Dues.

Dear Sirs:

I am in receipt of your favour dated 21st inst.
objecting to our Claims of Animals Taken Dues when
acknowledged before same are settled to us received.

Sirs,

Yes. Upon at the time when inquiries for the investing
of said Animals, the private Secretary wrote to Claims:

"Re. The Investing, undertaking to Assistant should
first proved in the writing of the receiver of the
Animals Taken the questions of first priority or some
part thereof is attached, a series of such Claims and
of his signature is well by letter to be sold trade
property to warrant the obligation."

The will note that value is no privilege in the Law due
any attachment of his values. Now, that is the initial Law
practice with Investing the Imperial many records. Only the
Privileged Persons privileges in the Instant case is not
practically mentioned in our section. It is immediately covered
by Tax. A. Thereof, more needs in Calgary. Those other Claims
as are required in Investing by Tax to be Imperial.

Therefore, the only practice to execution is whether the
matters mentioned that be mentioned. Matters with Trade Trade
Practices must Investigate over be invested without acknowledged.
Duty. In the matter mentioned in Investment.

Re Trade Dues.

My Col. 684.

The words has letter the word "Investment" be used in the matters
of Trade matters Dues or Interest signed all matters by the
Person to another Investment the title is be executed a Lien on
Interest, or Living's right, to a Debt or Duty."

In WARNOCK v. HARLOW,

96 Cal. 298,

The court held that a lis pendens was not an "instrument" as the latter term is used in the recording act.

I am therefore of the opinion that the notice referred to above is not an "instrument", and that it does not come within the provisions of Section 1161 of the Civil Code, which provides for the acknowledgment of the instrument before the same can be recorded.

You are therefore advised that you are justified in continuing the practice followed in your office for many years, and record the above mentioned notices without the same being acknowledged.

Sincerely yours,

CITY ATTORNEY.

To The Recorder.

December 25,1926.

SUBJECT: Taxation on Gross Receipts of
Highway Transportation Companies.

Dear Sir:

Your request for an opinion dated December 16th as follows was received by this office:

"Your opinion is requested re public carriers under the new law recently passed by vote of the people last November known on the ballot as Amendment No.2.

A certain taxpayer, having paid to this office a tax on his equipment in his possession on March 1st,1926, said tax covering the fiscal year from July 1st,1926 to June 30th,1927, and he now feels that this law making public carriers pay on their gross income in 1927, based on his 1926 figures, will cause a double tax, therefore, in view of this fact they wish to protest the 1926 tax on the grounds that the new law reads "in lieu of all other taxes".

OPINION.

Subdivision B of Section 15, Article XIII of the Constitution of California provides that the gross receipts mentioned therein shall be computed for the year ending December 31,1926, and that the value of any property mentioned in the section shall be fixed as of the first Monday in March, 1927. This subdivision of Section 15 also provides that nothing contained in the section shall affect any tax levied or assessed prior to the adoption of the section. Hence, the gross receipts tax which in the future, shall be in lieu of all other taxes, shall, commencing on the 1st day of January,1927, be substituted in place of the taxes on property. The fact that Subdivision B states therein that nothing contained in Section 15 shall affect any taxes levied or assessed prior to the adoption of the section indicates that it was intended by the passage of Section 15 that the taxes assessed on property on the first Monday in March,1926,

January 29,1944.

SUBJECT: Taxation on Gross Receipts of
Highway Transportation Companies.

Dear Sir:

Your request for an opinion dated December 15th as follows was received by this office:

"Your opinion is requested to public carriers under the new law recently passed by vote of the people [illegible] known on the ballot as Amendment No.2.

A certain taxpayer, having paid to this office a tax on its gasoline in his possession on [illegible], and [illegible] the Special [illegible] [illegible] to [illegible], now to [illegible] that this office has ruling pending particularly on [illegible] issue in [illegible], based on the [illegible] will cause a [illegible] [illegible], in view of this fact they wish to produce the [illegible] can be [illegible] that the new law reads 'in lieu of all other taxes'.

OPINION.

Subdivision 2 of Section 14, Article XIII of the Constitution of California provides that the [illegible] mentioned therein shall be computed for all [illegible] thereof, [illegible], and that the value of any property [illegible] in the section shall be fixed as of the first Monday in March, 1927. This subdivision or Section 14 also provides [illegible] mentioned in the section shall after any tax levied or assessed prior to the adoption of the section. Hence, the gross receipts tax which is [illegible] shall be in lieu of all other taxes, shall, commencing on the 1st day of January, 1927, be substituted in place of the taxes on property. The fact that Subdivision 2 states that [illegible] mentioned in Section 14 shall attach [illegible] may cause levied or assessed prior to the adoption of the section indicates that it was intended by the adoption of Section 14 that taxes assessed on property on the first Monday in March, 1926,

should remain in full force and effect, regardless of the fact that Subdivision A of Section 15 provides that the gross receipts tax shall be in lieu of all other taxes. The provisions of Subdivision B to the effect that the gross receipts tax shall be in lieu of all other taxation, is general, and subordinate to the specific provision to the effect that nothing contained in the section shall affect any tax levied or assessed prior to the adoption of the section.

Double taxation in a legal sense does not exist unless the double tax is levied upon the same property within the same jurisdiction.

Canfield vs. County of L.A. 157 Cal. 617.

"To constitute double taxation, objectionable or prohibited, the two or more taxes must be (1) imposed upon the same property, (2) by the same state or government, (3) during the same taxing period, and (4) for the same purpose."

1 Cooley on Taxation, p.475.

"One complaining must show that he has paid one of the taxes before he asks to be relieved from the other."

1 Cooley on Taxation, p. 488.

"Taxation of income derived from property is not double because the property itself is taxed. The reason for this is that the two interests or species of property are distinct and severable."

1 Cooley on Taxation, p.500.

A tax of gross receipts is generally held to be not a tax on property but instead an excise tax on the franchise."

2 Cooley on Taxation, p.1710.

Thus it is made to appear that unless a taxpayer has already paid one tax he cannot protest payment as there is no double taxation until the time for payment of the second tax. From the foregoing it may be seen that the assessment of a tax on gross receipts does not constitute double taxation in this case. It is conceded, of course, that our Political Code provides that there shall be no double taxation in this state. In the present instance there are two taxes levied, one on property, and one on gross receipts. They are, of course, entirely different. The mere fact that a tax was paid on equipment in the possession of the taxpayer on March 1,1926, for the tax covering the fiscal

should remain in full force and effect, regardless of the fact that legislation is enacted providing that the gross receipts tax shall be in lieu of all other taxes. The provisions of Section 3 to the effect that the gross receipts tax shall be in lieu of all other taxation, is proposed, and ratification to the extent that nothing contained in the amendment should affect any tax levied or assessed prior to the adoption of the amendment.

Proper description in a legal sense does not exist unless the double tax is levied upon the same property within the same jurisdiction.

Marshall vs. County of L.A. 14 Cal. 2d.

"In constitutional law, plaintiff's or petitioner's. One or more bodies must be (1) injured upon the same property, (2) by the same state, or province, (3) during the same period, and (4) for the same purpose."

I Cooley on Taxation, 2.-17.

"One exercising must show that he has paid one of the taxes before it will be relieved from the other."

I Cooley on Taxation, p. 448.

"Taxation of income derived from property is not double because the property itself is taxed. The reason for this is that the two impositions or species of property are distinct and unrelated."

I Cooley on Taxation, p.-447.

A tax of three percent is constitutional to be met a tax on property but should not obtain tax on the franchise."

I Cooley on Taxation, p.-1414.

Thus it is safe to assume that unless a single tax already paid can be proved granted against an State it is double taxation until the time for payment of the second tax. Thus the reasoning is any be that the assessment of a tax on gross receipts does not constitute double taxation in this case. It is supposed, of course, that one political body cannot levy a double taxation in this state. It the present instance there are two taxes levied, one on property, and one on gross receipts. That is, of course, multiply situation. The case held that a tax was paid as equivalent in the ownership of the taxpayer on March 1,1933, for use for carrier the fiscal

year from July 1,1926 to June 30,1927, would not constitute double taxation when a gross receipts tax is levied for the year 1927, for the reasons herein advanced.

By the passage of Section 15 it is obvious that the people of the State of California desired to change the system of taxation from that of property to that of gross receipts. In doing this, they used the natural and stock phrase to the effect that the gross receipts tax shall be in lieu of all other taxes; and if this statement in Subdivision A of Section 15 is in anywise misleading, it has been wholly cured by the provision to the effect that nothing contained in the section shall affect any tax levied or assessed prior to the adoption of the section.

Under no circumstances would the situation set forth be productive of double taxation.

Respectfully,

City Attorney.

THE ASSESSOR.

1134

December 27, 1926.

Honorable
Franck C. Havenner,
Board of Supervisors,
City Hall, City.

Dear Sir:

In response to your verbal request that you be advised as to the procedure necessary to create a bridge and highway district under the Act of May 25, 1923, I will state that this Act provides that a bridge and highway district may be organized to consist of one or more counties or parts of a county ~~or county~~ or counties including a city and county, provided that each of said counties shall be contiguous to another county within the district. The procedure to originate by the Board of Supervisors of the several counties adopting an ordinance to the effect that the county or part of the county intends to unite with such other counties as may adopt like ordinances to form such district.

In such ordinance it shall be directed that a petition be circulated therefor and the Board shall by resolution name and appoint persons to circulate and secure signatures for the same.

The petitions must be directed to the Secretary of State and signed by at least 10% of the number of the qualified electors in each county in which petitions are presented; the number of electors to be determined by the last vote for the Governor of the State. The petition must set forth the extent of the district, describing it generally and must have attached a copy of the ordinance. The ordinance may be enacted by the Board of Supervisors at any time after application shall be made to them for such purpose, but in case the Board shall neglect to act upon the application for a period of 60 days, the ordinance may be submitted directly to the people within the county under the provisions of the initiative, but in case said ordinance shall be passed by the Board of Supervisors it shall be subject to the referendum provisions generally applicable to ordinances.

The law then provides for the examination by the County Clerk or Registrar of Voters of the signatures to the various petitions and for his forwarding the same to the Secretary of State. The law then provides for the publication of the petitions by the County Clerk and of the hearing of protests as to the inclusion or exclusion of any property from the district and for reviews by the Supreme Court of the decision of the Superior Court on questions of law or jurisdiction only.

After all the protests have been disposed of and the

result of the judgments of the different courts certified to the Secretary of State, the Secretary of State issues a certificate of incorporation declaring the district with the boundaries finally established to be a duly incorporated bridge and highway district. Thereafter the Secretary of State notifies the Boards of Supervisors in the respective counties in the district of the formation of such district and within 30 days thereafter each of the Boards of Supervisors shall appoint persons to act as a Board of Directors of the district, the appointment being made as follows:

For counties with the population less than 40,000 -	1 director
Over 40,000 and not more than 100,000 -	2 directors
Over 100,000 and less than 500,000 -	3 "
And for counties having a population of 500,000 and over -	5 "

The act further provides for the term of office of these directors and for their compensation, which is fixed at $20.00 for each meeting of the directors.

The Board generally has power to obtain all necessary officers and employees and fix their compensation, to borrow money, to make contracts, institute condemnation proceedings, and to cause taxes to be levied for the purpose of paying running expenses, organization expenses and investigation expenses of the district before the issuance of bonds, and after the issuance of bonds to levy taxes to pay the same.

No bonds can be issued without a 2/3 vote of those within the District voting in favor of the issuance of the bonds.

The directors also have the right to fix tolls and to generally manage the affairs of the district, in so far as they pertain to the construction or maintenance of bridges and highways.

This is merely a general synopsis of the Act, and I may state that at the present time the regularities of certain provisions are pending before the Supreme Court and an action involving some of the Northern Counties coming into the Golden Gate District.

Yours very truly,

CITY ATTORNEY.

1133

LHB

Dec. 27th, 1926.

Honorable Warren Shannon,
Board of Supervisors,
City Hall,
San Francisco, Cal.

Dear Sir:

You have made a verbal request of me that you be advised as to what power the Board of Supervisors would have in the matter of the various applications which are now pending before them for authority to construct toll bridges over the San Francisco Bay to the Alameda shore, to give consideration to a site which is not included in any of the pending applications, and if this particular site which is not included in any of the pending applications met with the approval of the Board, could the other applications be held in abeyance to await the approval of the new site by the War Department.

You are advised that the Board of Supervisors has the power to determine the precise point where a bridge is to be located. That authority is found in Section 4 of the Act of the State Legislature of 1881, providing for the construction of bridges across navigable streams, etc., the section reading as follows:

> "Whenever the Supervisors of any county or counties desire to erect a bridge on a public highway, or to grant the privilege so to do to any individual or corporation, across a navigable stream, under the provisions of this act, said board or boards shall notify the State Engineer of such purpose, and of the precise point where such bridge is proposed to be located."

As I have already advised you in a previous opinion dated December 15th, 1926, the Board of Supervisors have the power to construct a bridge themselves, but if they desire to grant the privilege to any individual or corporation, the provisions of the Political Code, Sections 2843 to 2881 inclusive, apply, and therefore, before the bridge could be constructed from any point selected by the Board, an application would have to be made by some individual or corporation for permission to construct the bridge from that point, provided of course, that the city did not wish to undertake the construction itself as provided in the Act of 1881.

LHB

Dec. 27th, 1920.

Honorable Warren Dunham,
Board of Supervisors,
City Hall,
San Francisco, Cal.

Dear Sir:

You have made a verbal request of me that you be advised as to what power the Board of Supervisors would have in the matter of the various applications which are now pending before them for authority to construct toll bridges over the San Francisco Bay to the Alameda shore, to give consideration to a site which is not included in any of the pending applications, and if their preferred site which is not included in any of the pending applications was not with the approval of the Board, could the other applications be held in abeyance to await the approval of the new site by the War Department.

You are advised that the Board of Supervisors has the power to determine the precise point where a bridge is to be located. That authority is found in Section 4 of the act of State Legislature of 1921, providing for the construction of bridges across navigable streams, etc., the section reading as follows:

> "Whenever the supervisors of any county or counties desire to erect a bridge on a public highway, or to grant the privilege so to do to any individual or corporation, across a navigable stream, under the provisions of this act, said board or boards shall notify the State Engineer of such purpose, and of the precise point where such bridge is proposed to be located."

In I have already advised you in a previous opinion dated December 12th, 1921, the Board of Supervisors have the power to construct a bridge themselves, but if they desire to grant the privilege to any individual or corporation, the provisions of the political Code, sections 4040 to 4051 inclusive, apply, and therefore, before the bridge could be constructed from any point selected by the Board, an application would have to be made by some individual or corporation for permission to construct the bridge from that point, provided of course, that the city did not wish to undertake the construction itself as provided in the act of 1921.

There can be no objection to your considering a new application for a bridge from any particular point which might be deemed most satisfactory to the Board of Supervisors. This new application might be filed by one who has not already made application to the Board of Supervisors, or those who have already made applications from other points could make applications for permission to construct the bridge at the place deemed most advisable by the Board, and the Board could consider many applications from any particular point, selecting the one which it deemed best suited to the needs of the city. This authority is found in Section 2873 of the Political Code, which reads as follows:

> "The Board of Supervisors may, at the time of granting authority to construct a toll bridge, by order, require the bridge to be constructed within a certain time, to be of a certain width, character or description, and to be constructed of certain materials, which order must be complied with by the owner or corporation constructing the same before license to take tolls is issued."

I am of the opinion that the authority granted to the Board by the above section is sufficiently broad to permit the Board to select the plan that it may deem best suited for the needs of the city. I will state, however, that any application to construct a bridge from a new site, whether it is made by one not already before the Board, or made by those whose applications are pending, will have to be treated in all respects as a new application, and new publications will have to be made on each application, and a new hearing had thereon. As to the pending applications, the Board has the authority to adjourn the hearing on these applications from time to time until the hearing on the new site could be had.

If it is the intention of the Board to grant more than one application, it might grant a franchise from the new site selected, and adjourn the hearing on the other applications until the War Department had passed on the selected site, and then act upon the others. I have made no computation as to what delay the action indicated above would have upon the existing franchises, as that is a matter entirely within the discretion of your Board, my only suggestion being that the utmost care be exercised in properly adjourning the hearing of all applications.

Sincerely yours,

CITY ATTORNEY.

There can be no objection to your considering a new application for a bridge from any particular point which might be deemed most satisfactory to the Board of Supervisors. This new application might be filed by one who has not already made application to the Board of Supervisors, or those who have already made applications from other points could make applications for permission to construct the bridge at the place deemed most advisable by the Board, and the Board could consider many applications from any particular point, selecting the one which it deemed best suited to the needs of the city. This authority is found in Section 2473 of the Political Code, which reads as follows:

"The Board of Supervisors may, at the time of granting authority to construct a toll bridge, by order, require the bridge to be constructed within a certain time, to be of a certain width, character or description, and to be constructed of certain materials, which order must be complied with by the owner or corporation constructing the same before license to take tolls is issued."

I am of the opinion that the authority granted to the Board by the above section is sufficiently broad to permit the Board to select the plan that it may deem best suited for the needs of the city. I will state, however, that any applications to construct a bridge from a new site, whether it is made by one not already before the Board, or made by those whose applications are pending, will have to be treated in all respects as a new application, and new publications will have to be made on each application, and a new hearing had thereon. As to the pending applications, the Board has the authority to adjourn the hearing on those applications from time to time until the hearing on the new site would be had.

If it is the intention of the Board to grant more than one application, it might grant a franchise from the new site selected, and adjourn the hearing on the other applications until the Tax Department had passed on the selected site, and then act upon the others. I have made no computation as to what taxes the action indicated above would have upon the existing franchises, as that is a matter entirely within the discretion of your Board, my only suggestion being that the change here be accomplished in properly adjourning the hearing of all applications.

Yours truly,

CITY ATTORNEY.

Dec. 30th, 1926.

SUBJECT: Right of Board of Supervisors to Designate Equipment to be used by Public Utility.

Dear Sir:

I am in receipt of your letter of December 28th, enclosing copy of Resolution No. 26582 (New Series), which reads as follows:

"Resolution No. 26582 (New Series).

"Resolved, That the sum of Forty-seven Thousand Seven Hundred and forty-two dollars is hereby appropriated from the Municipal Railway Depreciation Fund and authorized to be expended by the Board of Public Works for Embarcadero busses, as follows:

For the purchase of six White Chassis complete, to meet City Engineer's specifications ..$30,129.
For California Motor Coach Bodies 17,613.
$47,472."

You ask that you be advised as to whether or not the Board of Supervisors has the right to designate the purchase of the special equipment mentioned in the resolution.

OPINION.

Sec. 9 of Chap. I, Art. VI of the Charter provides:

"The Board of Public Works shall have charge, superintendence and control under such ordinances as may from time to time be adopted by the Supervisors:

Sub. 8. Of the construction, maintenance and operation of any and all public utilities, owned, controlled or operated by the City and County, or which may hereafter be so constructed, owned, controlled or operated. Full authority is vested in the Board of Public Works to carry out the powers granted in this paragraph, and it may, in accordance with such ordinances as the Supervisors

B.

> may enact, contract for work to be performed, or materials or equipment to be furnished, or for expert, technical or professional services to be rendered, wherever such work, services, materials or equipment are certified by the City Engineer to be necessary in connection with the construction, maintenance or operation of such utilities."

Under the provisions of the subdivision quoted, it would appear that to some extent a dual control is exercised over public utilities owned and operated by the city, one by the Board of Public Works pursuant to the direct provisions of the section, and the other by the Board of Supervisors under such ordinances as that Board may enact as provided in the section. It was undoubtedly the intention of the charter framers that the powers of each of the controlling authorities should be so exercised, that one would to some extent be a check upon the other, but that neither should so operate that the people should not receive the fullest benefit of their publicly owned utilities.

I am of the opinion that it lies within the power of the Board of Supervisors, acting by ordinance, to regulate the method as to how the Board of Public Works shall acquire equipment for the particular utility, or in other words, it may specify the manner of entering into contracts for the needed equipment, the class of service to be furnished, and may specify to a very large degree the character of the equipment which may in its opinion be necessary for that particular service, and the Board of Public Works is bound by its ordinance in this regard. To illustrate - As the Board of Supervisors has authorized the operation of a bus line on the Embarcadero, it has the right to regulate the character of service which it wishes to furnish to the public, and would therefore have the right to specify the number of buses, their size, etc., and the Board of Public Works would not have the right to depart from the regulations.

Your attention is however directed to the power of the City Engineer over all equipment which may be purchased by the Board of Public Works. That official must certify to its necessity, and it is only when he does so that the Board of Public Works, even pursuant to the order of the Board of Supervisors, has the right to contract for it. This brings us therefore, to the question as to the power of the Board of Supervisors over the specific type of the equipment. If the City Engineer should certify that a certain type of equipment (which would furnish the service demanded by the Board of Supervisors) was necessary for the particular utility, the Board of Supervisors would not have the right to compel the purchase of equipment of another type.

way wants, contract for work to be performed,
or materials or equipment to be furnished, or
for object, technical or professional services
to be rendered, purchase land, easements,
buildings or equipment are entitled by the
city Employer to be necessary in connection
with the acquisition, maintenance or operation
of such utilities.'

You are therefore advised that the Board of Supervisors has the right to regulate the method of entering into all contracts for public utility equipment and to specify its general character and the class of service to be installed, but not the independent power to compel the purchase of any particular type of equipment to give that service.

I note, however, that the resolution which you forwarded me states that a portion of the appropriation is made "for the purchase of six White Chassis complete, to meet City Engineer's specifications". If the City Engineer has approved the six White Chassis, or certified to their necessity for the particular utility in question, the Board has the right to specify this particular type of chassis in its resolution appropriating the money for their purchase.

Sincerely yours,

CITY ATTORNEY.

To His Honor The Mayor.

Dec. 30th, 1926.

SUBJECT: Power of Board of Supervisors to Retain Engineer to make a Survey for new Street Lighting System.

Dear Sir:

I am in receipt of your letter under date of December 8th, 1926, enclosing copy of letter of Mr. Adolph Uhl, in which he questions the legality of the appointment of an engineer by the Board of Supervisors for the purpose of making a survey for a proposed new street lighting system for San Francisco. You asked that you be advised if a demand for the salary of any engineer appointed by the Board of Supervisors for this purpose would be a valid claim against the City, and should it receive your approval.

OPINION.

I understand that the appointment has been made by the Board of Supervisors under authority of Ordinance No. 7296 (New Series), which reads as follows:

"Section 1. The Committee on lighting, water and telephone service and electricity, is hereby authorized and directed to employ such engineers as may be necessary to carry on a survey for a proposed new street lighting system for San Francisco."

Subdivision 3 of Section 9, Chap. I, Art. VI of the Charter, gives to the Board of Public Works, under such ordinances as may from time to time be adopted by the Supervisors, charge, superintendence and control of the lighting of streets, parks, squares, and other public places and buildings within the City and County. Section 10 of the same Chapter and Article reads as follows:

"All examinations, plans and estimates required by the Supervisors in connection with any public improvements or utilities, shall be made by the Board of Public Works, and it shall, when requested to do so, furnish information and data for the use of the Supervisors."

I am of the opinion that a survey for a proposed new street lighting system involves the making of an examination, plans and estimates for a public improvement, and therefore, under the charter provision, the same should be made by the Board of Public Works, and that it is the duty of the Board of Public Works to make such plans, examinations and estimates as the Board of Supervisors may require, and to furnish such information and data for the use of the Board as may be necessary to permit the Board to adopt such plan or plans as it may desire for any new street lighting system that it may by ordinance authorize the Board of Public Works to install or to have installed.

It is a well settled principle of law that it is not within the power of a county board to employ or contract with a person to perform acts which are a part of the official duties imposed by statute on another county officer. It would appear to me that Section 10 of the Charter above quoted very clearly imposes upon the Board of Public Works the duty of making examinations, plans and estimates for any public improvement. The principle of law above quoted has received the attention of our Supreme Court on more than one occasion. I direct your attention to the following cases:

MODOC vs. SPENCER & RAKER,
103 Cal. 498.

In this case the question before the court was whether or not the Board of Supervisors of Modoc County had the power to employ counsel to assist in the prosecution of a criminal case. The court held that as the District Attorney was charged by law with the prosecution of criminal cases, it was beyond the power of the Board of Supervisors to retain special counsel in the premises.

The same doctrine is reiterated in the case of VENTURA COUNTY vs. CLAY, where the court held that the Tax Collector was charged with the collection of license taxes, and that the Board of Supervisors had no authority to appoint or make a contract with a private individual to collect the taxes.

In MERRIMAN vs. BARNUM, 116 Cal. 619, the court held that the District Attorney of the County was the sole legal advisor of the Board of Supervisors, and that the Board could not charge the County with liability for special counsel for mere legal advice on matters pertaining to the reconstruction of a courthouse.

In the case of RAFAEL vs. BOYLE, 31 Cal. App. 623, the court held that the Civil Service Commission of San Francisco had no authority to retain special counsel to represent it in litigation, for the reason that the City Attorney was charged with the duty of representing all boards and officials.

I further direct your attention to the opinion of former City Attorney Hon. Percy V. Long, rendered March 18th, 1910, in which he had occasion to construe Section 10 above quoted, and other similar sections of the charter. In the case submitted to him the question arose as to the validity of an appointment of an architect made by the Board of Supervisors for the purpose of drawing plans for a school building. In that opinion, Judge Long advised the Board of Supervisors that the Board of Public Works was charged with this duty, and it was beyond the power of the Board of Supervisors to make such an appointment.

In view of the foregoing, you are advised that the Board of Supervisors has not the power to appoint an engineer to make a survey for a proposed new street lighting system, and any demand which may be made upon you for anyone employed under such appointment, is not a legal charge against the City.

Sincerely yours,

CITY ATTORNEY.

To the Auditor.

Dec. 31st, 1926.

SUBJECT: Bonds from Extra Clerks or Deputies.

Dear Sir:

Yesterday through Mr. Thomas you requested me to advise you whether the language in Section 7 of Article XV of the Charter was mandatory on you in the respect of exacting a bond from extra clerks or deputies.

OPINION.

You are advised that the word "may" frequently has been construed by our Supreme Court as meaning "must". However, Section 6 of Article XV of the Charter provides that your official bond must cover all acts and omissions of your deputies. In view of the latter provision in Article XV of the Charter, it is my opinion that the fair interpretation of Section 7 would mean that the word "may" is used in its ordinary accepted sense, and the section was written into the charter merely for your protection, and it rests with your discretion as to whether bonds of extra deputies or clerks should be exacted.

Yours respectfully,

CITY ATTORNEY.

To Mr. R. L. Wolden
Assessor.

Dec. 22nd, 1926.

Yours truly,

Secretary.

Dear Sir:

Yesterday through r. Brown you requested me to advise you whether the language in section V of article IX of the Charter was mandatory so you in the regular of carrying a bond upon which claims of insurance.

Yours respectfully,

Street	From	To	Term of Grant	Date of Expiration	Remarks
Bush	Market	Sansome	50 yrs.	Nov. 28,1929)	Market to
Bush	Market	Kearny	50 yrs.	Nov. 3, 1929)	Battery, no track ever laid. Battery to Sansome, track laid, not operated.
Sutter	arket	Grant Ave.	50 yrs.	Nov.28,1929	
Sutter	Market	Presidio Ave.	50 yrs.	Nov.14,1929	
Post	Kearny	Stockton	50 yrs.	Nov. 3,1929	
Post	Fillmore	Presidio(formerly Cemetery Ave.)	50 yrs.	Nov. 3,1929	Operation abandoned.
Turk	Market	1st Ave.	50 yrs.	Nov. 3,1929	Divisadero to First never constructed. Company conceded forfeiture of this grant by years after getting another franchise (1892) to operate from Fillmore W.
*McAllister	Market	Central Ave.)			
Private property from	Central Ave.	Fulton)	50 yrs.	Sept.20,1929	
*Fulton	Private Property and Masonic	19th Ave.)			
*Hayes	Market	Stanyan	50 yrs.	Sept.20,1929	
Fell	Baker	Stanyan	50 yrs.	Nov. 3, 1929	Never constructed
Page	Fillmore	Masonic	39 yrs.	Nov. 28,1929	
*Haight	Market	Stanyan	50 yrs.	Sept.20,1929	
*Waller	Stanyan	200 ft.east	37 yrs.	Nov.28, 1929	
Frederick	Masonic	Arguello Blvd.	39 yrs.	Nov.28,1929	-Arguello formerly
Parnassus	Stanyan	Fifth Ave.	31 yrs.	Nov.28,1929	1st Ave.
*Market	Ferry	Castro	50 yrs.	Sept.20,1929	
Castro	Market	26th	43 yrs.	Oct. 9, 1929	
*Valencia	Market	Mission	50 yrs.	Sept.20,1929	
Mission	(Embarcadero	Courtland Ave.	50 yrs.	Nov. 28,1929	Embarcadero formerly east.
	(Courtland Ave.	Silver Ave.	39 yrs.	Nov. 28,1929	
	(Silver Ave.	County Line	37 yrs.	Nov. 28,1929	Mission S.of26th formerly Mission Road.
West Mission-Mission &	12th	Mission near 14th	39 yrs.	Nov. 29,1929.	Not operated.
Brady	Market	West Mission	39 yrs.	Nov. 28,1929.	No track laid.
Howard	Embarcadero	26th	50 yrs.	Nov. 28,1929.	
Tehama	3rd	West about 300 ft.	50 yrs.	Nov. 28,1929.	Operation abandoned. Tracks taken up.
Folsom	First	Army	50 yrs.	Nov. 14,1929.	
Brannan	6th	9th			For many years operated only to horse car barn on Brannan nr. 8th.
Brannan	3rd	1st	50 yrs.	Nov. 3, 1929	
Bluxome	4th	5th	50 yrs.	Sept.20,1929	Abandoned operation
Townsend	3rd	200 ft.East of 4th	(50 yrs.	Nov. 28,1929	Never operated from 2nd to 3rd.
Townsend	200 ft. East of 4th	4th	(50 yrs.	Nov. 14,1929	
Berry	3rd	4th	43 yrs.	Dec. 24,1929	

Street	From	To	Term of Grant	Date of Expiration	Remarks
Potrero Ave.	23rd	25th	43 yrs.	Dec. 24,1929.	Abandoned operation. Tracks taken up. 25th formerly Yolo.
San Bruno Ave.	25th	Army	43 yrs.	Dec. 27,1929.	Army formerly Colusa. San Bruno Ave. formerly Nebraska St.
Embarcadero	Market	Mission	50 yrs.	Nov.28,1929	
	Market	Howard	43 yrs.	Nov.27,1929	
First	Market	Folsom	50 yrs.	Nov. 14,1929	
Second	Market	Townsend	50 yrs.	Nov. 28,1929.	Not constructed S. of Howard until about 1896. Never constructed S. of Brannan.
Third	Market	"Southerly End" (Channel St.)	50 yrs.	Nov. 28,1929.	Never constructed S.of Berry. For years constructed only to Brannan St.
Fourth	Market	"Southerly End"	50 yrs.	Nov. 14,1929.	Never constructed S. of Kentucky. Tracks taken up from Townsend to Berry some years ago.
*Fifth	Market	Bluxome	50 yrs.	Sept.20,1929	Not operated from Brannan to Bluxome
Sixth	Market	Brannan	50 yrs.	Nov. 12,1929.	
Eighth	Market	Folsom	50 yrs.	Nov. 14,1929.	
Eighth	Bryant	Brannan	35 yrs.	Nov. 12,1929.	Not operated for many years.
Ninth	Market	Mission	50 yrs.	Nov. 14,1929	
12th	Market	Mission	39 yrs.	Nov. 28,1929.	Tracks laid. Not operated.
Brady	Market	West Mission	39 yrs.	Nov. 28,1929.	
23rd	Howard	Potrero	43 yrs.	Dec. 24,1929.	Tracks laid years ago. Later taken up. Never operated.
24th	Howard	Potrero Ave.	43 yrs.	Dec. 27,1929	
25th	Potrero	San Bruno Ave.	43 yrs.	Dec. 27,1929.	Abandoned operation Tracks taken up.
26th	Mission	Folsom	**35 yrs.		**Expires with connecting lines"
	Mission			Nov.28,1929.	
	Howard			Nov.28,1929.	
	Folsom			Nov.14,1929	
Army	Folsom	San Bruno	31 yrs.	Nov.14,1929	
Precita	Folsom	Army	31 yrs.	Nov.14,1929	Not operated from Folsom to a point east of Alabama.
29th	Mission	Noe	37 yrs.	Nov.28,1929	Not operated. A track is laid on Virginia and a short distance on Coleridge for connection to 29th & Mission car barn.
Powell	Mission	Coleridge (formerly Calif.Ave)	37 yrs.	Nov.28,1929	
Coleridge	Powell	Courtland Ave.			
Virginia Ave.	Mission	Coleridge			
Courtland Ave.	Mission	Folsom to Eugenie, to Bocana, to Courtland	37 yrs.	Nov.28,1929.	Courtland Ave. not built until about 15 years ago. Other streets never built upon.
Park Street and Holly Park Circle, Andover St., Richland Ave. and Holly Ave. east from Mission			37 yrs.	Nov.28,1929.	Never constructed.

STATEMENT OF EXPIRATIONS OF RAILWAY RIGHTS IN STREETS.

City's Point of View
Based on Minimum Franchise Term of First or Primary Franchises held by Original Grantees or Successors Thereto.

FUTURE FRANCHISE EXPIRATIONS.

Street	From	To	Term of Grant.	Date of Expiration	Remarks.
1929.					
		California Street Cable Co.			
California	Davis	Parker Ave.	50 yrs.	Feb.17,1929.	Originally two grants, 25 yrs. Order No. 1538 extends them to expire in 50 years. From 200 ft. W. of Presidio Ave. to Parker Ave. not operated under this franchise.
Jones	Market Pine Hyde	Pine Hyde Jefferson	40 yrs.	May 3,1929.	Bush from Jones to Hyde, thence to Pine, not operated.
O'Farrell	Market	Jones	39 yrs.	May 3,1929.	
		United Railroads.			
Columbus	Montgomery	Powell	50 yrs.	Nov.14,1929 & Nov.28,1929	Not operated except about half block from Union to Powell and from Mason to Taylor.
Columbus	Mason	Beach			
Union	Stockton	Powell	50 yrs.	Nov.28,1929	
Broadway	Columbus	Powell	50 yrs.	Nov.14,1929	
Pacific	Columbus	Stockton	50 yrs.	Nov.29,1929	Abandoned operation
Jackson	Embarcadero	Sansome	50 yrs.	Nov. 3,1929	Abandoned operation
Jackson	Sansome	Columbus	50 yrs.	Nov.28,1929	
Washington	Embarcadero	Sansome	50 yrs.	Nov. 3,1929	Operated only from Montgomery to Kearny.
	Sansome	Stockton		Nov.28,1929	
Clay,	Kearny	Van Ness Ave.	50 yrs.	Nov.29,1929	Track removed from to Van Ness many years ago. This was first cable line operated in the world.
California	Parker	First	50 yrs.	Feb.17,1929	
California	First	Sixth	50 yrs.	Nov.29,1929	Never operated under this franchise. Used under Omnibus franchise.
Pine	Market	Sansome			Not operated for many years.
	Market to Battery		50 yrs.	Nov.3,1929 Nov.14,1929 Nov.28,1929	
	Battery to Sansome		50 yrs.	Nov.3,1929 Nov.28,1929	

Street	From	To	Term of Grant	Date of Expiration.	Remarks.
Bosworth	Mission	Glen Park	31 yrs.	Nov.28,1929	
Circular Ave.	Bosworth	Sunnyside Ave.	34 yrs.	Nov.28,1929	
Sunnyside Ave.	Circular Ave.	Plymouth Ave. (extended)	34 yrs.	Nov.28,1929	Originally constructed to about Baden St. Now operated to Genessee St.
Ocean Ave. & Ocean House Rd.	Mission	Great Highway (Ocean Beach)	34 yrs.	Nov.28,1929	Street unavailable from Mission to Onondaga Ave. Never constructed from junction at Ingleside(now Junipero Serra Blvd) to Great Highway. Street closed in 1906.
Plymouth Ave. (extended)	Ocean Ave.	Sunnyside Ave. (extended)	34 yrs.	Nov.28,1929	Never constructed
Onondaga Ave.	Mission	Ocean Ave.	34 yrs.	Nov.28,1929	
Sickles Ave.	Mission	Ocean View (San Jose Ave)	34 yrs.	Nov.28,1929	Never constructed
Curve through Golden Gate Park from Waller South and west, thence through private property to Arguello Blvd. (formerly First Ave.)			46 yrs.	Nov.28,1929	Not used. Tracks taken up some years ago.
‡ "H" St. thence across G. G. Park	Arguello Blvd. 49th Ave.	49th Ave. "P" St.	50 yrs.	Nov.28,1929	
Curve out of G.G. Park on Great Highway to Cliff House			50 yrs.	Nov.28,1929	Never built.
6th Ave.	California	Fark	50 yrs.	Nov.29,1929	Never built under this grant.
Arguello	Fulton	Turk	50 yrs.	Nov. 3,1929	
‡ Stanyan	Haight	Frederick	27 yrs,	Nov.28,1929)	Not operated from
	Frederick	Parnassus	31 yrs.	Nov.28,1929)	Frederick to Carl
Masonic	Page	Frederick	39 yrs.	Nov.28,1929	
Baker	Turk	Fell	50 yrs.	Nov. 3,1929	Never built.
Fillmore	Turk	Post	50 yrs.	Nov. 3,1929	Not operated for years. Later another franchise granted over entire length of street.
Laguna	Hayes	McAllister	50 yrs.	Sept,20,1929	Not operated. Attempt to exclude this street by amendment to original franchise years after its grant.
Polk	Sutter	Union	50 yrs	Nov.14,1929	
Polk	Union	Tonquin	39 yrs.	Nov.14,1929	Not built. Three blocks only from Union to Lombard built 1907.
Larkin	Market	Sutter	50 yrs.	Nov.14,1929	Not operated from Post to Sutter. Track taken up.

Street	From	To	Term of Grant	Date of Expiration	Remarks
Leavenworth	Clay	Jefferson	50 yrs.	Nov.29,1929	Abandoned operation. Tracks taken up. Never operated, Vallejo to Jefferson.
Taylor	Post	Market	30 yrs.	Nov.12,1929	
Mason	Columbus	Bay St.	50 yrs.	Nov.14,1929	Not operated
	Bay St.	Jefferson	35 yrs.	Nov.14,1929	
Powell	Market	Geary	50 yrs.	Nov. 3,1929	Not operated for years. Later Powell St. Cable franchise granted.
Powell	Broadway	"Northerly End"			Built during 'seventies to
	Broadway	Columbus	50 yrs.	Nov.14,1929	Francisco St.
	Union	Jefferson	50 yrs.	Nov.28,1929	About 23 years ago extended to Jefferson.
Stockton	Washington	Union	50 yrs.	Nov.28,1929	Not operated from Washington to Broadway. Tracks taken up.
Grant Ave.	Market	Post	50 yrs.	Sept.20,1929	Tracks taken up
	Geary	Post	50 yrs.	Nov. 3, 1929	some years ago.
	Market	Bush	50 yrs.	Nov. 28,1929	Grant Ave. formerly Dupont St.
Montgomery	Market	Jackson	50 yrs.	Nov.28,1929	Not operated from Washington to Jackson.
Kearny	Market	Pacific	50 yrs.	Nov.14,1929	
Kearny	Pacific	Broadway	50 yrs.	Nov.14,1929	
Sansome	Market	Chestnut (Sea Wall)			Not operated from Market to Bush, although track laid.
	Market	Jackson	50 yrs.	Nov. 28,1929	
	Bush	Jackson	50 yrs.	Nov. 12,1929	
	Jackson	Chestnut	30 yrs.	Nov. 12,1929	
Battery	Market	California	50 yrs.	Nov.14,1929	Track laid; not operated.
Embarcadero	Foot of Market	Jackson	50 yrs.	Nov. 3,1929	

* Question as to date of expiration, whether 1929 or 1932; Amending Order No. 1676 ambiguous.

‡ Question as to date of expiration, whether 1929 Or 1932; Amending Order No. 1736 ambiguous.

1930

United Railroads.

Street	From	To	Term of Grant	Date of Expiration.	Remarks.
Pacific Ave.	Polk	200 ft. W.of Divisadero	43 yrs.	Apr.14,1930	
Embarcadero	Howard	Folsom	41 yrs.	Aug. 2,1930	
Folsom	Embarcadero	First	41 yrs.	Aug. 2,1930	
Folsom	Army	Stoneman	41 yrs.	Oct.16,1930	Not operated from Bernal Park to Stoneman.
Ninth	Mission	Brannan	43 yrs.	Apr.14,1930	
Eighth	Folsom	Bryant	41 yrs.	Aug. 2,1930	
Bryant	Second	26th	41 yrs.	Aug. 2,1930	
26th	Bryant	Folsom	41 yrs.	Oct.16,1930	

1931.

United Railroads.

Jackson	Powell	Presidio (formerly Cemetery Ave)	25 yrs.	July 12,1911	Date of expiration under Extension Order 1882, questionable
Washington	Stockton	Steiner	25 yrs. 45 yrs.	July 12,1911 July 14,1931	Not operated from Stockton to Powell
Clay	Embarcadero	Battery	25 yrs. 45 yrs.	July 12,1911 July 14,1931	
Sacramento	Embarcadero	Battery	25 yrs. 45 yrs.	July 12,1911 July 14,1931	
Sacramento	Powell	Walnut	20 yrs. 40 yrs.	Oct. 22,1911 July 14,1931	
Stockton	Sacramento	Clay	20 yrs. 30 yrs.	Oct. 22,1911 July 14,1931	No track built
Powell	Geary (or Market)	Jackson,	45 yrs.	May 3,1931	
Mason	Clay	Greenwich and Columbus Ave	25 yrs. 45 yrs.	Oct. 22,1911 July 11,1931	Not operated from Clay to Washington
Taylor	Columbus	Bay St.	25 yrs. 45 yrs.	Oct. 22,1911 July 14,1931	
Larkin	Sacramento	Clay	20 yrs. 40 yrs.	Oct. 22,1911 July 14,1931	
Spear	Market	Bryant	50 yrs.	Dec. 11,1932	Tracks taken up
Tenth	Market	Howard	50 yrs.	Nov. 10,1932	Probably only a part built or operated. Four years later another franchise was granted over same route.
Tenth	Howard	Brannan	50 yrs.	Dec. 11,1932	
Army	Howard	Folsom	50 yrs.	Dec. 11,1932	Never built.

PARKSIDE TRANSIT CO., Leased to United Railroads

Taraval ("T")	Easterly end at 12th Ave.	33rd Ave.	25 yrs.	Oct.17,1932	Not built from "Easterly End" or 12th Ave. to 20th Ave.
33rd Ave.	Taraval	Vincente ("V"			
Vincente	33rd Ave.	35th Ave.			
35th Ave.	Vincente	Sloat Blvd.			
Sloat Blvd.	Ocean Ave.	Great Highway	25 yrs.	Oct.17,1932	
46th Ave.	Sloat Blvd.	Wawona ("W")			
Wawona	46th Ave.	Great Highway	25 yrs.	Oct.17,1932	
19th Ave.	Wawona	Sloat Blvd.	25 yrs.	Oct. 17,1932.	

1933

UNITED RAILROADS.

Street	From	To	Term of Grant	Date of Expiration	Remarks.
Polk	Market	Sutter	50 yrs.	Jan. 3,1933	Market to Grove, cable never built. Operated under subsequent electric and cable franchise. Grove to Post, never built. See 1936, below.
Post	Larkin	Polk	50 yrs.	Jan.3,1933	

PARKSIDE TRANSIT CO., Leased to United Railroads.

20th Ave.	Lincoln Way	Lawton, thence to 19th Ave.	25 yrs.	May 12,1933	Lincoln Way formerly "H" Street

1935

GOUGH ST. RAILWAY, Leased to United Railroads.

Gough	Market	McAllister	25 yrs.	June 13, 1935.	

1936

United Railroads.

Post	Montgomery	Kearny	50 yrs.	Dec. 27,1936	
Post	Stockton	Leavenworth	50 yrs.	Dec. 27,1936	
Ellis	Market	Leavenworth	47 yrs.	June 17,1936	Cable tracks from Divisadero to Broderick removed about 1896.
Ellis	Leavenworth	Broderick	50 yrs.	Dec. 27,1936	
Leaverworth from Post to City Hall Ave. to Grove St., to Polk, to Market and 10th, to Brannan and Potrero Ave., to 25th.			50 yrs.	Dec. 27,1936	Tracks taken up on Potrero Ave. from Brannan to 25th.
Brannan	3rd	6th	47 yrs.	June 17,1936	Not constructed in time required by franchise.
Brannan	9th	10th	47 yrs.	June 17,1936	Not constructed in time required by franchise.
24th	Potrero	San Bruno	47 yrs.	June 17,1936	
San Bruno	24th	Army	47 yrs.	June 17,1936	Track taken up about 1896.
San Bruno	Army	Oakdale	47 yrs.	June 17,1936	Tracks taken up on Oakdale about 1896. Oakdale formerly 15th Ave. S. Lane formerly "L" St.
Oakdale	San Bruno	Lane			
Oak	Fillmore	Stanyan	50 yrs.	Dec. 27,1936	
Stanyan	Oak	Haight	50 yrs.	Dec. 27,1936	
Judah	5th	9th Ave.	25 yrs.	Jan. 23,1936	

Street	From	To	Term of Grant.	Date of Expiration	Remarks
9th	Judah	Pacheco("P")	25 yrs.	Jan.23,1926	
Arguello Blvd.	Frederick	Lincoln Way	45 yrs.	Dec.27,1936	
First	Bryant	Brannan	47 yrs.	June 17,1936	Never built
Embarcadero	Jackson	Broadway)	50 yrs.	Dec.23,1940	Not built for some years after grant.
Broadway	Embarcadero	Columbus)			
Divisadero	Vallejo	Sacramento	50 yrs.	Dec.23,1940	Never built from Jackson to Vallejo.
Sacramento	Walnut	Arguello Blvd)			
First Ave.	Sacramento	Lake)50 yrs.		Dec.23,1940	
Lake St.	Arguello Blvd.	California)			
O'Farrell	Hyde	Scott	50 yrs.	Dec.29,1940	Originally double track, changed to single.
O'Farrell	(Scott	Divisadero			
	(East 1/2 block from Scott		45 yrs.	Dec.29,1940	
	(West 1/2 block to Divisadero				
Eddy	Market	Divisadero			
	Market	Hyde)50 yrs.		Dec.29,1940	
	Market	Divisadero)50 yrs.		Dec.23,1940	
Hyde	Eddy	O'Farrell	50 yrs.	Dec.29,1940	Not operated from Eddy to Elli.
Scott	O'Farrell	Fell)			Tracks taken up on Scott, Fell and Baker Sts. about 1896.
Fell	Scott	Baker)	50 yrs.	Dec.29,1940	
Baker	Fell	Page)			
Page	Masonic	Stanyan	50 yrs.	Dec.29,1940	
Steuart	Howard	Harrison	50 yrs.	Dec.23,1940	
Bryant	Spear	2nd	50 yrs.	Dec.23,1940	Never built from Spear to Stanley Place.
Brannan	Beale	First	50 yrs.	Dec.23,1940	Never built
Stanley Place	Bryant	Harrison	50 yrs.	Dec.23,1940	
Harrison from Steuart to 14th to Guerrero to San Jose Ave. to 30th St. to Chenery to Diamond to San Jose Ave.(Old San Jose Road) to County Line.			50 yrs.	Dec.23,1940	Not operated since 1906 from Stanley Place to 3rd St.
18th from Guerrero to Falcon, thence returning on "Switch back" to Corbett Road to Clayton St. to Ashbury to Frederick			50 yrs.	Dec. 23,1940	
Clayton	Frederick	Waller)			
Waller	Clayton	Stanyan)	50 yrs.	Dec. 11,1940	
Clayton	Page	Waller	50 yrs.	Dec. 29,1940	Not operated
Cole	Waller	Parnassus)			
Parnassus	Cole	Stanyan)	50 yrs.	Dec. 29,1940	Not operated
Carl	Cole	Stanyan	50 yrs.	Dec. 29,1940	

1941

UNITED RAILROADS.

Street	From	To	Term of Grant.	Date of xpiration.	Remarks.
Eighth from Brannan to Kansas, thence to 17th to Connecticut to 18th to Kentucky			50 yrs.	Nov.18,1941	Never built from 8th and Brannan to Kansas and thence to 16th
4th from Berry to Kentucky to Railroad Ave. to San Bruno Ave. southerly to a point 20 ft. north of County Line			50 yrs.	Nov.18,1941	Franchise not to go into effect until surrender of Potrero and Bay View franchise on some streets. No record of such surrender.

1942.

UNITED RAILROADS.

16th from Kansas to Church to Dubbce to Fillmore, Turk and Post, to Bay of San Francisco.			50 yrs.	June 3,1942	
Divisadero	Sacramento	Page	50 yrs.	Dec. 6,1942	
Balboa("B")	Arguello	19th Ave.)			
19th Ave.	Balboa	G. G. Park)	50 yrs.	June 3,1942	Never built
22nd	Howard	Chattanooga	50 yrs.	Dec. 6, 1942.	
Dolores and Chattanooga	22nd	24th	50 yrs.	Dec. 6, 1942.	
24th	Dolores	Hoffman	50 yrs.	Dec. 6,1942.	
20th	Kentucky	Maryland	50 yrs.	Dec. 5, 1942.	Not operated.